

CITY AND COUNTY OF
SAN FRANCISCO
MUNICIPAL CODE

ADMINISTRATIVE CODE

VOLUME II



MUNICIPAL CODE CORPORATION

Tallahassee, Florida

2006

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SEC. 11.1. DEFINITIONS.

For purposes of Articles I through VIII of this Chapter, and of any Franchise granted pursuant to this Chapter, the following terms, phrases, words, abbreviations, their derivations, and other similar terms, when capitalized, shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words

in the singular number include the plural number. The words "shall" and "will" are mandatory. "May" is permissive. However, as applied to official action, the words "shall" and "will" shall be directory in effect. Unless otherwise expressly stated, words not defined herein shall be given their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. Unless otherwise expressly stated, if specific provisions of law referred to herein are renumbered or amended, then the reference shall be read to refer to the renumbered or amended provision.

(a) "Affiliate," when used in relation to any Person means another Person who owns or Controls is owned or Controlled by, or is under common ownership or Control with, such Person.

(b) "Applicable law" means all applicable federal, state, and City laws, ordinances, codes, rules, regulations and orders, as the same may be amended or adopted from time to time.

(c) "Applicant" means any Person submitting a Proposal pursuant to this Chapter.

(d) "Board" means the City's Board of Supervisors.

(e) "Bona Fide Institutional Lender" means any one or more of the following: (1) a savings bank, a savings and loan association, a commercial bank or trust company, an insurance company, a real estate investment trust, or any other Person which at the time a pledge in trust or mortgage is recorded in favor of such Person or Persons, has assets of at least \$500 million in the aggregate (or the equivalent in foreign currency, and is regularly engaged in the financial services business; or (2) any special account, managed fund, department, agency or Affiliate of any of the foregoing. For purposes hereof: (1) acting in a "fiduciary capacity" shall be deemed to include acting as a trustee, agent, or in a similar capacity under a mortgage, loan agreement, indenture

or other loan document; and (2) a lender, even if not a Bona Fide Institutional Lender, shall be deemed to be a Bona Fide Institutional Lender if, no more than thirty (30) City business days after such loan is consummated, the notes or other evidence of indebtedness or the collateral securing the same are assigned to a Person then qualifying as a Bona Fide Institutional Lender.

(f) "Cable Service" means the one way transmission to Subscribers of video programming or other programming service and subscriber interaction, if any, required to select or use such video programming or other programming service.

(g) "Cable System" means a Facility that consists of a set of closed transmission paths and associated signal generation, reception, and control equipment designed to provide Cable Service to multiple Subscribers. Except where expressly stated otherwise, Cable System includes an Open Video System. Cable System does not include: (1) a Facility that serves only to retransmit the television signals of one or more television broadcast stations, (2) a Facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934 (47 U.S.C. Sections 201-276) except that such Facility shall be considered a Cable System to the extent such Facility is used to provide Cable Services; and (3) any Facilities of a gas or electric utility necessary or proper and used solely for: (i) the transmission, distribution, or supply of gas or electricity; or (ii) the transmission or collection of gas and electric usage and pricing information incidental thereto; or (iii) to provide services required by the City.

(h) "Cable System Franchise" means a Franchise authorizing construction, installation, or operation of a Cable System or the provision of Cable Service over a Cable System. "Cable System Franchise" includes an OVS Franchise, unless expressly excluded hereunder.

(i) "CPUC" means the California Public Utilities Commission.

(j) "City" means the City and County of San Francisco, a municipal corporation of the State of California.

(k) "Control" means the power to control the affairs and key decisions of another Person, in whatever manner exercised, whether directly or indirectly.

(l) "Department," in reference to a Cable System Franchise or any other communications-related Franchise, means the Department of Telecommunications and Information Services. In reference to any gas, electric, or steam Franchise, "Department" means the San Francisco Public Utilities Commission. In reference to any other type of Franchise, "Department" means the City department assigned by the Board to process the Proposal or administer the Franchise.

(m) "Facilities" includes any physical element used in connection with, or designed to be used in connection with, the provision of Services, whether or not located in the Public Rights-of-Way, including, without limitation, pedestals, cabinets, ducts and conduits (whether empty or occupied), transformers, equipment, drains, handholds, lines, line extensions, service drops, manholes, poles, power supplies and generators, splice boxes, surface location markers, vaults, tunnels, amplifiers, power guards, nodes, cables, and fiber optics (whether active or dark).

(n) "FCC" means the Federal Communications Commission.

(o) "Final Report" means a report submitted to the Board by the Department making a final recommendation upon a Proposal.

(p) "Franchise" means an authorization granted by ordinance of the Board to a Person to construct, install, or operate Facilities in the Public Rights-of-Way or to provide Services using Facilities installed in the Public Rights-of-Way. "Franchise" shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the City as required by other ordinances or laws of the City, including, without limitation:

(1) Any permit, agreement or authorization required in connection with operations on public streets or property such as permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the City

or a private entity, or for excavating or performing other work in or along Public Rights-of-Way; and

(2) Express or implicit authorization to provide Service to, or install Facilities on, private property without owner consent.

(q) "Franchise Area" means the geographic area of the City in which a Franchise authorizes a Grantee to construct, install, or operate Facilities or to provide Services.

(r) "Franchise Fee" means a payment made to the City in accordance with Section 11.21 below. In the case of a UVPP, "Franchise Fee" shall mean a fee in lieu of a franchise fee, pursuant to 47 U.S.C. Section 573(c)(2)(B).

(s) "Grantee" means a Person granted a Franchise by the City, and any lawful permitted successor or assign.

(t) "Gross Revenues" means any and all income, receipts and other revenue of any kind or nature arising from or in connection with the operation of, or provision of Service using, Facilities in the Franchise Area and as may be more specifically defined in a Franchise.

(u) "Material Breach" means a breach of the Franchise that has a substantial and significant effect on the rights or benefits either party to the Franchise has secured pursuant to the Franchise. "Material Breach" shall include, but not be limited to, those breaches designated as such in the Franchise and this Chapter.

(v) "Open Video System" or "OVS" means a Cable System owned, operated, or Controlled by a Person certified by the FCC pursuant to 47 U.S.C. Section 573 and holding an OVS Franchise pursuant to this Article.

(w) "Operator" means any Person who: (1) provides Service over Facilities and either directly or indirectly owns, or has an Affiliate that owns, a significant interest in the Facilities; or (2) otherwise Controls, or is responsible for, through any arrangement, the operation or management of Facilities.

(x) "OVS Franchise" means a Franchise authorizing construction, installation, or operation of an Open Video System or the provision of Cable Service over an Open Video System.

(y) "Permittee" means a person granted a UCP.

(z) "Person" means any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall not include the City.

(aa) "Personal Wireless Service" means commercial mobile services provided under a license issued by the FCC.

(bb) "Personal Wireless Service Facilities" means antennas and related Facilities used to provide or facilitate the provision of Personal Wireless Service.

(cc) "Personal Wireless Service Facilities Site Permit" means a permit issued by the Department of Public Works authorizing a Person to construct Personal Wireless Service Facilities.

(dd) "Proposal" means any application proposal submission or request filed pursuant to the requirements of this Chapter to: (1) obtain a new Franchise; (2) Transfer a Franchise; (3) extend a Franchise; or otherwise modify a Franchise. A Proposal includes an Applicant's initial proposal, submission or request, as well as any and all amendments or supplements to the Proposal and relevant correspondence.

(ee) "Proposal Fee" means a charge to recover the City's actual costs of processing Proposals hereunder.

(ff) "Public Rights-of-Way" means the area in, on, upon, above, beneath, within, along, across, under, and over the public streets, sidewalks, roads, lanes, courts, ways, alleys, spaces, and boulevards within the geographic area of the City in which the City now or hereafter holds any property interest, which is dedicated to Public use and which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining Facilities to provide Service to customers.

(gg) "Required Service Area" means the geographic area of the City a Grantee must construct, install or operate Facilities in or provide Service in, pursuant to its Franchise.

(hh) "Revocation" means the City's affirmative act of Terminating a Franchise.

(ii) "Service" means any service provided on a Commercial or for hire basis using Facilities installed in the Public Rights-of-Way. "Service" includes without limitation: (1) leasing or, through any other arrangement, offering the use of a Facility installed in the Public Rights-of-Way (except for the mandatory provision of Facilities pursuant to 47 U.S.C. Section 224 or California Public Utility Commission orders) and (2) the transmission of electronic signals through Facilities installed in the Public Rights-of-Way, whether or not owned by Person providing service to Subscribers. "Service" shall not include Telecommunications Service, State Video Service or Personal Wireless Service

(jj) "State Video Service" means video programming services, Cable Service, or OVS Service authorized under a State Video Service Franchise that is provided through Facilities located at least in part in Public Rights-of-Way without regard to delivery technology, including Internet protocol or other technology.

(kk) "State Video Service Franchise" means a franchise issued by the CPUC pursuant to California Public Utilities Code Section 5800, et. seq.

(ll) "Subscriber" means the City or any Person who legally receives any Service.

(mm) "Telecommunications Service" means any service subject to regulation by the CPUC or the FCC as a telecommunications service and provided to customers by a telephone corporation regulated by the CPUC.

(nn) "Termination" means the conclusion of a Franchise by any means, including, but not limited to, by expiration of its term, abandonment, or Revocation.

(oo) "Transfer" means any transaction in which: (1) all or a portion of any Facilities or any rights to use or operate Facilities located in the Public Rights-of-Way are sold, conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by one or more transactions to another Person, whether voluntarily or by operation of law or otherwise; or (2) there is any change, acquisition, or transfer in the identity of

the Person in Control of the Grantee, or any Person that controls Grantee, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or (3) the rights or obligations under the Franchise are sold, conveyed, transferred, assigned, encumbered (except as set forth herein) or leased, in whole or in part, directly or indirectly, by one or more transactions to another Person, whether voluntarily or by operation of law or otherwise. It will be presumed, for purposes of clause (2) above, that any transfer or cumulative transfer of a voting interest by a Person or group of Persons acting in concert of twenty five percent (25%) or more of Grantee, or Person that Controls Grantee, or any change in the managing general partners of a Grantee is a change of Control. "Transfer" does not include: (1) a lease to a UVPP pursuant to 47 U.S.C. Sections 532 or 573; (2) the transmission of a commodity or electronic signal using Facilities on a common carrier basis; (3) a lease or other right to use Facilities mandated pursuant to 47 U.S.C. Section 224, California Public Utilities Code Section 767.5, or by an order of the CPUC; or (4) a pledge in trust, mortgage or other encumbrance against the Facilities, or any portion thereof, given to a Bona Fide Institutional Lender in connection with a loan or other financing required to secure the construction, operation, or repair of the Facilities ("Loan") provided that such Loan is subject to the rights and powers of the City pursuant to the Franchise and Applicable Law, including, without limitation, the right of the City to approve any Transfer pursuant to Section 11.14 below upon foreclosure. "Transferring" and "Transferee" shall have correlative meanings.

(pp) "Unaffiliated Video Programming Provider" or "UVPP" means any Person who uses capacity on a franchised Cable System to deliver Cable Service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers and who is not an Affiliate of the Grantee.

(qq) "Utility Conditions Permit" or "UCP" means a permit issued by the Department of Public Works authorizing a Person to construct,

install, and maintain specific Facilities in the Public Rights-of-Way. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000; Ord. 214-07, File No. 070904, App. 9/21/2007)

SEC. 11.2. BOARD AUTHORITY TO ISSUE FRANCHISES.

Pursuant to Charter Section 16.111, the Board has the power by ordinance to grant any Person a Franchise, or renew, extend, transfer, or amend a Franchise, to authorize use of the Public Rights-of-Way to provide service. This Chapter 11 sets forth the procedural and substantive rules the Board will apply in exercising this power. Nothing in this Chapter may be deemed or construed to compel the grant of a Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.3. FRANCHISE REQUIRED.

Except as provided in Section 11.4 below, no Person may construct, install, or operate Facilities in the Public Rights-of-Way, or provide Service using any Facilities installed in the Public Rights-of-Way, without a Franchise that authorizes each and every Service provided. Any Person using Facilities owned by another Person to provide Service, whether by lease or other arrangement, shall be required to obtain a Franchise pursuant to this Chapter. A Grantee may, at any time and pursuant to this Chapter, apply to expand the scope of its Franchise, subject to appropriate conditions, or apply for a separate Franchise to provide other Services. The fact that a Person uses Facilities to provide Service not requiring a Franchise does not obviate the need to obtain a Franchise where the Facilities are also used to provide other Services. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.4. EXCEPTIONS TO FRANCHISE REQUIREMENT.

The following shall not be required to obtain a Franchise under this Chapter:

- (a) The City;
- (b) A UVPP that is only delivering Cable Service or other communications service (as that term is used in 47 U.S.C. Section 542(h)) to Subscribers;

(c) Persons using Facilities solely to provide only Telecommunications Services unless and until Applicable Law permits local governments to require telephone corporations in California to obtain a local Franchise or pay fair and reasonable compensation for the use of the Public Rights-of-Way in connection with the provision of Telecommunications Service;

(d) Persons using Facilities solely to provide Service to themselves, and not to any third parties on a for hire or commercial basis;

(e) Persons, other than Operators of a Cable System, using Facilities installed in the Rights-of-Way where:

(1) Such Person, or its Affiliates, do not or will not own directly or indirectly, a significant interest in Facilities installed in the Rights-of-Way and are not responsible for the installation or maintenance of Facilities in the Public Rights-of-Way; and

(2) The Facilities used by such Person have been authorized to occupy the Public Rights-of-Way for the purposes for which they are being used;

(f) Persons using any portion of Facilities installed in the Public Rights-of-Way to provide Service where:

(1) Such Facilities are covered by a Franchise; and

(2) Such Person agrees, in writing in a form acceptable to the City Attorney, to be bound by the terms and conditions of such Franchise as a Grantee under such Franchise and for purposes of this Chapter; and

(g) Persons who hold an encroachment permit, or other valid permit or Permission, issued by the Department of Public Works or the Board, consistent with Applicable Law, allowing them to place all of the Facilities at issue in the Public Rights-of-Way, so long as such Facilities are limited to those of a specified type and size and placed only at specifically authorized and discrete locations in the Public Rights-of-Way. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.5. FAILURE TO OBTAIN A FRANCHISE.

Consistent with the requirements of due process, a Person's failure to obtain a Franchise as required by this Chapter may, in the City's discretion, result in:

(1) Forfeiture, by operation of law, of the Person's Facilities located in the Public Rights-of-Way that are not authorized by an existing Franchise; and/or

(2) A requirement that the Facilities be removed, and that penalties and damages be paid. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.6. EXISTING FRANCHISES.

Grantees of Franchises existing as of the effective date of this Chapter shall, in addition to all the obligations and duties prescribed by the terms of their existing Franchises, be subject to the substantive and procedural requirements herein, except as prohibited by Applicable Law. Nothing herein is intended to invalidate a lawful, existing Franchise or to waive any obligations imposed by such a Franchise. Notwithstanding the foregoing, provisions of this Chapter that expressly refer to a "Franchise granted pursuant to this Chapter" shall not apply to Franchises initially granted prior to the effective date of this Chapter. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.7. CONTINUED USE AFTER EXPIRATION OF FRANCHISE.

So long as a Grantee is seeking in good faith to renew a Franchise, upon expiration of a Franchise, the continued use by a Grantee of the Public Rights-of-Way shall continue on a month-to-month basis, for a maximum of twelve (12) months, under the same terms and conditions, and for the same consideration, as provided in the expired Franchise, unless the Franchise has been Revoked or unless otherwise determined by ordinance of the Board. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.8. NO EXCLUSIVE FRANCHISES.

A Franchise is nonexclusive and shall not explicitly or implicitly preclude the issuance of other Franchises or preclude the City from installing, constructing, operating, and/or maintaining its own Facilities. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.9. UTILITY CONDITIONS PERMIT, PERSONAL WIRELESS SERVICE FACILITIES SITE PERMIT.

(a) **Utility Conditions Permit.**

(1) **Required for Providers of Telecommunications Service, State Video Service and Personal Wireless Service.** The Department of Public Works shall require a Person to obtain a Utility Conditions Permit prior to the construction, installation, or maintenance of Facilities in the Public Rights-of-Way that will be used to provide Telecommunications Service, State Video Service or Personal Wireless Service. UCPs shall be issued by the Department of Public Works in a manner consistent with Applicable Law to Persons who are willing to comply with the City's requirements regarding the physical use and occupation of the Public Rights-of-Way and who have: (A) authority to occupy the Public Rights-of-Way pursuant to California Public Utilities Code Section 7901; (B) authority to occupy the Public Rights-of-Way pursuant to California Public Utilities Code Section 5885; or (C) a license to provide Personal Wireless Service issued under federal law. Persons intending to construct, install, or maintain Facilities to provide Telecommunications Services, State Video Service or Personal Wireless Service shall prove their legal right to occupy and use the Public Rights-of-Way by providing the Department of Public Works a copy of their current: (a) certificate of public convenience and necessity issued by the CPUC (which shall expressly state the Person's authority to provide facilities-based Telecommunications Service); (b) State Video Service Franchise issued by the CPUC; or (c) license to provide Personal Wireless Service issued by the FCC., The Department of Public Works shall include in a UCP such conditions, in addition to

those already set forth in Applicable Law, as may be required to govern the Permittee's construction, installation, or maintenance of Facilities in the Public Rights-of-Way to protect and benefit the public health, safety and welfare. The terms and conditions of a UCP shall be limited to those areas consistent with the City's authority under Applicable Law. A UCP shall have a term of no longer than two (2) years and may be renewed in accordance with requirements established by the Department in the UCP. A UCP shall provide that the Permittee is not entitled to construct, install, or maintain Personal Wireless Service Facilities in the Public Rights-of-Way without obtaining a Personal Wireless Service Facilities Site Permit under Section 11.9(b) below.

(2) **UCP fee.** Any Person required to obtain or renew a UCP shall pay to the Department of Public Works a non-refundable application fee of two thousand dollars (\$2,000.00) to compensate the City for all costs (including the City Attorney's costs) related to: (A) establishing the Person's authority to occupy the Public Rights-of-Way; (B) establishing the terms on which Persons may occupy the Public Rights-of-Way and (C) granting, monitoring, enforcing, renewing, revising or revoking UCPs. These fees shall be deposited in the Public Works Excavation Fund established by Section 10.100-230 of the San Francisco Administrative Code.

(b) Personal Wireless Service Facilities Site Permit.

(1) **Required for Personal Wireless Service Facilities.** The Department of Public Works shall require a Permittee to obtain a Personal Wireless Service Facilities Site Permit to install, construct, and maintain Personal Wireless Service Facilities in the Public Rights-of-Way. The Department of Public Works shall include in a Personal Wireless Service Facilities Site Permit such conditions, in addition to those already set forth in Applicable Law, as may be required to govern the construction, installation, or maintenance of Personal Wireless Service Facilities in the Public Rights-of-Way to protect and benefit the public health, safety and welfare. The terms and conditions of a Personal Wireless Service

Facilities Site Permit shall be limited to those areas consistent with the City's authority under Applicable Law. A Personal Wireless Service Facilities Permit shall have a term of no longer than two (2) years and may be renewed in accordance with requirements established by the Department in the Personal Wireless Service Facilities Site Permit.

(2) **Procedure for Personal Wireless Service Facilities Site Permits.** The Department of Public Works shall implement a procedure for issuing Personal Wireless Service Facilities Site Permits that is consistent with Applicable Law and the requirements of this Section.

(A) **Review by the Planning Department.** The Department of Public Works shall submit to the Planning Department for review any application for a Personal Wireless Service Facilities Site Permit allowing for the construction, installation, or maintenance of Personal Wireless Service Facilities: (i) on historic, historically or architecturally significant, decorative, or specially designed utility poles; (ii) in a historic or locally significant district; (iii) adjacent to a historic, architecturally significant or locally significant building; or (iv) on a street where the City and County of San Francisco General Plan has identified the presence of valued scenic resources that should be protected and conserved. The Planning Department shall not recommend approval of a Personal Wireless Service Facilities Site Permit unless the Planning Department determines that a Personal Wireless Service Facilities in the proposed location is consistent with the public health, safety, convenience and general welfare and will not unreasonably affect, intrude upon or diminish any of the identified City resources. Where review by the Planning Department is required, the Department of Public Works shall not issue a Wireless Services Facilities Site Permit unless the Planning Department has recommended approval.

(B) **Review by the Recreation and Park Department.** The Department of Public Works shall submit to the Recreation and Park Department for review any application for a Personal Wireless Service Facilities Site Permit allowing

for the construction, installation, or maintenance of a Personal Wireless Service Facility adjacent to a City park or open space. The Recreation and Park Department shall not recommend approval of a Personal Wireless Service Facilities Site Permit unless the Recreation and Park Department determines that a Personal Wireless Service Facility in the proposed location will not unreasonably affect, intrude upon or diminish a City park or open space. Where review by the Recreation and Park Department is required, the Department of Public Works shall not issue a Wireless Services Facilities Site Permit unless the Recreation and Park Department has recommended approval.

(C) **Review by the Department of Public Health.** The Department of Public Works shall submit to the Department of Public Health for review any application for a Personal Wireless Service Facilities Site Permit allowing for the construction, installation, or maintenance of a Personal Wireless Service Facility. The Department of Public Health shall not recommend approval of a Personal Wireless Service Facilities Site Permit unless the Department of Public Health determines that any human exposure to radio frequency emissions from the proposed Personal Wireless Service Facility is within limits established by the FCC. The Department of Public Works shall not issue a Wireless Services Facilities Site Permit unless the Department of Public Health has recommended approval.

(3) **Personal Wireless Service Facilities Site Permit Fees.**

(A) **Fees of the Department of Public Works.** An applicant for a Personal Wireless Service Facilities Site Permit shall pay to the Department of Public Works: (i) a non-refundable application fee of seventy-five dollars (\$75.00) for each Personal Wireless Service Facility contained in the application to compensate the Department of Public Works for all costs related to reviewing the application and; (ii) a non-refundable time and materials inspection fee not to exceed one hundred fifty dollars (\$150.00) for each Personal Wireless Service Facility contained in the application to compensate the De-

partment of Public Works for all costs related to inspecting any Personal Wireless Service Facility constructed under a Personal Wireless Service Facilities Site Permit to ensure compliance with all of the terms and conditions of contained therein, including any costs incurred by the Department of Public Health to confirm that human exposure to radio frequency emissions from the Personal Wireless Services Facility is within FCC limits.

(B) **Fees of Other City Departments.** Where as required under this Section the Department of Public Works has referred an application for a Personal Wireless Service Facilities Site Permit to the Planning Department, the Recreation and Park Department or the Department of Public Health, the applicant shall pay the following additional fees for each Personal Wireless Service Facility contained in an application for a Personal Wireless Service Facilities Site Permit: (i) a Planning Department non-refundable fee of one hundred five dollars (\$105.00) plus time and materials; (ii) a Recreation and Park Department non-refundable fee of one hundred twenty-five dollars (\$125.00) and (iii) a Department of Public Health non-refundable fee of one hundred thirty-five dollars (\$135.00) plus time and materials for any review that takes more than thirty (30) minutes. The purpose of these fees is to compensate the applicable City department for all costs related to reviewing an application for a Personal Wireless Service Facilities Site Permit.

(C) **Adjustment of Fees for CPI.** Beginning with fiscal year 2008-2009, the fees established herein may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index ("CPI") (as determined by the Controller). No later than April 15th of each year, the Director of Public Works shall submit the current fee schedule to the Controller, who shall apply the CPI adjustment to produce a new fee schedule for the following year. No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new fee and certifying that: (i) the fees produce sufficient revenue to support the costs of providing the

services for which the fee is charged; and (ii) the fees do not produce revenue that exceeds the costs of providing the services for which each permit fee is charged.

(D) **Discretion to Require Additional Fees.** In instances where the review of an application for a Personal Wireless Service Facilities Site Permit is or will be unusually costly to the Department of Public Works or to other City agencies, the Director of Public Works, in his or her discretion, may require a Person filing an application for a Personal Wireless Service Facilities Site Permit to pay a sum in excess of the amount charged pursuant to this section. This additional sum shall be sufficient to recover actual costs incurred by the Department of Public Works and/or other agencies, boards, commissions, or departments of the City in connection with an application for approval of a Personal Wireless Service Facilities Permit and shall be charged on a time and materials basis. Whenever additional fees are charged, the Director of Public Works, upon request, shall provide in writing the basis for the additional fees and an estimate of the additional fees.

(E) **Deposit of Fees.** All fees paid to the Department of Public Works for Personal Wireless Service Facilities Site Permits shall be deposited in the Public Works Excavation Fund established by Section 10.100-230 of the San Francisco Administrative Code. All other fees shall go directly to the appropriate City department. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000; amended by Ord. 33-02, File No. 020051, App. 3/28/2002; Ord. 214-07, File No. 070904, App. 9/21/2007)

SEC. 11.10. FILING OF PROPOSAL.

Any Person seeking to (1) obtain a Franchise; (2) Transfer a Franchise; (3) extend the term of an existing Franchise, (4) renew a Franchise, or (5) modify an existing Franchise to add new Services that are required to be authorized by a Franchise pursuant to this Chapter, shall submit a signed original of its Proposal and eleven (11) copies to the Clerk of the Board and nine (9) copies to the Department. The Clerk of the Board shall make a Proposal available for public inspection.

The Proposal must conform to all of the requirements of this Chapter. Requests for other types of Franchise modifications may be processed by the Department without a Proposal, and submitted to the Board for approval. However, nothing herein shall prevent the Department from requiring a Proposal in the event the Department determines, based on the nature of the requested modification, that the public interest would best be served by the submission of a Proposal pursuant to this Article. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.11. PROPOSAL FEE.

(a) **Reasonable Costs.** An Applicant shall pay all reasonable costs incurred by the City related to the processing of any Proposal. Processing costs shall include, but not be limited to, the costs of services rendered by any City employee, agent or representative, including consultants and attorneys.

(b) **Controller's Estimate.** Upon receipt of a Proposal, the Clerk of the Board shall immediately ask the Controller to estimate the City's processing costs. The Controller shall complete his or her estimate of such costs within fifteen (15) City business days of receipt of a Proposal. The Clerk of the Board shall notify the Applicant of the Controller's Proposal Fee estimate within three (3) City business days of receipt from the Controller. Applicant shall pay the amount contained in the Controller's estimate within fifteen (15) City business days of notice.

(c) **Failure To Pay.** Failure to pay the estimated Proposal Fee shall render the Proposal incomplete. If no Proposal Fee is paid within six (6) months of notification to the Applicant of the Controller's estimate, the Board may deny the Proposal on that basis.

(d) **Deposit/Offset.** The Proposal Fee shall be deposited with the Controller. Within twenty (20) City business days of final action on a Proposal or an Applicant's formal acceptance or rejection of a Franchise, whichever is later, the Controller shall provide an account of the City's actual Proposal processing costs to the Applicant. The Controller may offset the Proposal

processing costs from the Proposal Fee deposit consistent with the provisions of Administrative Code Sections 10.27-1 through 10.27-7. Where the City's actual costs are determined by the Controller to fall below the amount of the Proposal Fee deposit, the difference shall be refunded to the Applicant. Where the City's actual costs exceed the amount of the Proposal Fee deposit the Applicant shall be required to pay the difference to the Controller within twenty (20) City business days of notice.

(e) **Exceptions.** Where required by controlling Applicable Law a Proposal Fee paid pursuant to this Section shall be credited against any other charge, including Franchise Fees, required to be paid to the City. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.12. PROPOSAL CONTENTS.

Each Department shall adopt regulations setting forth the information that each type of Proposal must contain, and make such regulations available immediately upon request. A Proposal shall include all information required by the Department unless the Department determines, in its discretion, that a substitute reasonably satisfies the Purpose of the regulations. At a minimum, regulations shall require Applicants to provide information required by Applicable Law and sufficient for the City to consider the Proposal pursuant to Section 11.13(g) and, where applicable, Section 11.13(h) below. Regulations shall also, where appropriate, distinguish among the requirements applicable to Proposals for initial Franchises, Transfer Proposals, Renewal Proposals, and Proposals to modify an existing Franchise. Regulations may require, without limitation:

(a) **Identifying Information.** Information identifying the Applicant, its principle place of business, its corporate structure, and its ownership;

(b) **Experience.** A statement describing all previous experience of the Applicant and any Affiliate(s) in providing the proposed Service(s), or constructing, operating, or maintaining Facilities used to provide the proposed Service(s),

identifying any other Franchises to provide similar Service(s) awarded to Applicant, or any Affiliate(s), and the status of the construction of the Facilities under each Franchise;

(c) **Proposed Franchise.** The text of Applicant's proposed Franchise complying with Applicable Law, including, without limitation, a statement of the type of Service proposed to be provided. In the case of a Cable System Franchise:

(1) The Applicant must specify whether it seeks an OVS Franchise or a Cable System Franchise that is not an OVS; and

(2) A proposed Franchise shall not be required to be submitted with a renewal Proposal for a Cable System Franchise that is not an OVS if the Grantee is exercising its renewal rights pursuant to 47 U.S.C. Section 546.

(d) **Related Documents.** Any contracts, regulatory filings, shareholder reports, or other documents, including press releases, that refer to the Proposal, and all documents, schedules, exhibits, or the like referred to therein;

(e) **Proposed Operations.** To the extent applicable, a detailed description of the Applicant's plan of operation which shall include, at a minimum, a description of the existing and proposed Facilities and any construction plan;

(f) **Financial Qualifications.** Evidence that the Applicant has the financial resources and capacity to undertake and complete construction of the proposed Facilities, and to operate, maintain, repair, replace, and reconstruct the Facilities over the term of the Franchise;

(g) **Technical Qualifications.** Evidence that the Applicant is technically qualified to construct, operate and repair the Facilities;

(h) **Legal Qualifications.** Evidence that the Applicant is legally qualified to own, install, construct, operate, or provide Services using the Facilities;

(i) **Customer Service and Consumer Benefits.** A description of how the Applicant plans to address customer service issues and the benefits its market entry will provide to consumers in the City;

(j) **Other Agreements.** A detailed summary and copies of any and all agreements and undertakings, whether formal or informal, written, oral, or implied, existing or proposed to exist between the Applicant and any Person regarding the use of a Person's equipment or Facilities on which the Proposal depends;

(k) **Certification.** An affidavit or declaration, under penalty of perjury, by an officer of Applicant legally qualified to bind Applicant certifying:

(1) The truth and accuracy of the information in the Proposal and that the proposal meets all requirements of Applicable Law;

(2) That Applicant is willing to enter into a Franchise meeting the requirements of Applicable Law, to Pay required compensation, and to abide by the City's standard contract terms and all provisions of Applicable Law; and

(3) That Applicant has not entered into any agreement that would prevent it from complying with any of these requirements. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

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SEC. 11.13. PROPOSAL REVIEW PROCEDURE.

(a) **Competitive Process For Initial Franchises.** To fulfill the requirements of Charter Section 16.111, at any time between the receipt of a Proposal for an initial Franchise and the grant of a Franchise thereunder, the Department shall, by advertisement or any other means, solicit and call for additional Proposals for similar Franchises. The Department shall evaluate the responses and report to the Board regarding the results of the solicitation. The Board shall consider the responses to the solicitation prior to granting any Franchise. The solicitation need not comply with the provisions of Chapter 21 of this Code and the City may award more than one Franchise as a result of the solicitation. However, nothing herein precludes the Department from requiring a competitive process similar to that set forth in Chapter 21 of this Code, nor does anything herein require the City to award any Franchise.

(b) **Completeness.** Promptly, upon receipt of a Proposal, the Department shall report to the Applicant regarding the Proposal's completeness. The Department shall also report to the Board within twenty (20) City business days regarding the Proposal's completeness. The Proposal shall not be deemed complete until such time as the Applicant provides all information and certifications required pursuant to regulations adopted pursuant to Section 11.12 above.

(c) **Additional Information.** An Applicant shall provide any other details, clarifications, statements, information or references relevant to its Proposal which are requested by the Board or the Department in connection with their review of the Proposal and which are: (1) relevant to issues raised in the Proposal or related facts and circumstances that affect the Proposal; and/or (2) referenced in the Proposal but not provided therein. Such information shall not be required to determine that a Proposal is complete; however, the Board may require that this information be submitted prior to acting on a Proposal.

(d) **Incomplete Information.** To the extent that any data required pursuant to Section 11.12 above are not available at the time the Proposal is filed with the Board, the Proposal shall so state. Where the Department determines, in its sole discretion, that such information is not immediately critical to review of a Proposal, the Proposal may be reviewed by the City subject to the following conditions:

(1) That the data are filed and approved by the City before the Board takes action on the Proposal; and

(2) That, for purposes of applying any deadlines provided under Applicable Law, the date of the Proposal shall be the date all required information is submitted to the City.

(e) **Negotiations.** The Department shall negotiate the terms of a proposed Franchise on behalf of the City and may engage in negotiations with an Applicant at any time.

(f) **Final Report.** After finding a Proposal complete, the Department shall submit a Final Report to the Board recommending approval or denial of the Proposal. If the Department recommends approval of a Proposal, it shall include a proposed Franchise ordinance in the Final Report.

(g) **Issues For Consideration.** In reviewing a Proposal, the City shall consider, where applicable and without limitation, the issues set forth in this subsection. It shall be presumed that the issues set forth in subsections 2, 3, 4, 6, 8, and 9 are applicable to all Proposals. In any Final Report submitted to the Board, the Department shall state which additional issues it considers applicable to the consideration of any particular Proposal:

(1) Whether the Applicant's Proposal is sufficient to meet current and future community needs and interests, taking into account the cost to the Applicant of meeting such needs and interests;

(2) The positive and negative impacts to the City and consumers of approving the Proposal;

(3) The financial, technical, and legal qualifications of the Applicant and its ability to perform as promised;

(4) Whether the proposed provision of Services or operation of the Facilities is economically feasible;

(5) The projected technical performance of the proposed Facilities;

(6) The impact of Proposal approval on competition and whether it will interfere with the City's desire to ensure universal availability of Services;

(7) The Applicant's commitment to meeting the construction and physical requirements of the City;

(8) The Applicant's commitment to abide by City conditions, Applicable Law, and the terms of any proposed Franchise;

(9) The extent to which the Applicant has substantially complied with the Applicable Law and the material terms of any existing agreement it has with the City;

(10) Whether there will be an unreasonable adverse economic or aesthetic impact upon public or private property within the proposed Franchise Area, also taking into consideration the impact of any competing Proposals;

(11) Whether there will be an unreasonable disruption or inconvenience to existing users, or any adverse effect on future use, of utility poles, public easements, and the Public Rights-of-Way, also taking into consideration the impact of any competing Proposals; and

(12) Such other additional matters, both procedural and substantive, the City determines are relevant.

(h) **Cable System Proposal Considerations.** If the Proposal involves a Cable System Franchise, the City shall, in addition to the considerations set forth in subsection (g) above, also consider, to the extent applicable:

(1) Whether the Applicant has provided adequate assurance that it will provide adequate public, educational, and governmental access channel capacity, facilities, or financial support;

(2) Whether the Proposed Franchise reasonably meets current and future community cable-related needs and interests, taking into account the cost to the Applicant of meeting such needs and interests; and

(3) The issues identified in California Government Code § 53066.3 and other Applicable Law.

(i) **Board Disposition of Proposal.** The Board may take action on a Proposal and any proposed Franchise by resolution or ordinance, as appropriate, and shall consider any applicable provisions of subsections (g) and (h) above. A Board determination to grant a new Franchise shall comply with all applicable sections of the Charter, including Sections 2.105 and 16.111.

(j) **Grantee's Acceptance.** An Applicant shall file an unconditional written acceptance, in a form approved by the City Attorney, of any Board action approving a Proposal no later than twenty (20) City business days following such Board action. An Applicant's failure to submit an unconditional written acceptance within the twenty (20) day period shall constitute a rejection by the Applicant of the approval, unless time for acceptance is extended by motion of the Board. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.14. TRANSFER PROPOSALS.

(a) **City Approval Required.** A Franchise is a privilege that is in the public trust and personal and specific to the Grantee and is granted in consideration of the unique knowledge, skill and expertise Possessed by the Grantee. The City and other Subscribers shall not be required to accept performance of a Franchise from a third party who has not submitted its qualifications for review and approval by the Board pursuant to this Section. Except as otherwise expressly permitted herein pursuant to subsection (e) below, a Grantee shall not complete a Transfer unless a Proposal is submitted to the Board pursuant to Section 11.10 above ("Transfer Proposal") and the Board's approval is obtained by ordinance or resolution, as appropriate, and only then upon such terms and conditions as the Board deems necessary and proper, in its sole discretion, after conducting a review pursuant to Section 11.13(g) and Section 11.13(h) above. An Applicant, as defined in subsection (d) below, shall be given notice of its opportunity to be heard at a Board proceeding to consider the

Transfer Proposal. An Transfer without the approval of the Board shall be considered to impair the City's assurance of due performance, and may, at City's sole option, be null and void and constitute a Material Breach of the Franchise. Notwithstanding anything to the contrary in this Chapter or a Franchise, until expressly determined otherwise by the Board, Facilities constructed, installed, operating, or being used to provide Services pursuant to a Franchise shall remain subject to the Franchise regardless of any Transfer, whether or not City approval was obtained.

(b) **Subsequent Transfers.** The Board's approval of a Transfer Proposal in one instance shall not render unnecessary approval of any subsequent Transfer.

(c) **No Waiver.** The City's approval of a Transfer Proposal does not constitute a waiver or release of any of the rights of the City against the Transferring Grantee under this Chapter, a Franchise, or Applicable Law, whether such rights arose before or after the date of approval of the Transfer Proposal.

(d) **Proposal Submission.** For purposes of this Section, the Applicant shall be the proposed Transferee. At least one hundred twenty (120) calendar days prior to the contemplated effective date of a Transfer, the Applicant shall submit a Transfer Proposal to the Board for approval of the Transfer.

(e) **Exceptions.**

(1) **Affiliate Transfers.** Neither a Transfer Proposal or Board approval shall be required for a Transfer to an Affiliate of the Grantee ("Affiliate Transfer") where the Grantee and the proposed Transferee (the "Transfer Parties") meet the following requirements:

(i) The Transfer Parties provide all instruments and legal documents effecting the Affiliate Transfer, a description of the nature of the Affiliate Transfer, complete information describing who will have direct and indirect ownership and Control of the Franchise and the Facilities after the Affiliate Transfer within one hundred and twenty (120) calendar days of the effective date

of the Affiliate Transfer, and any additional information within ten (10) City business days of the Department's request, and

(ii) The Transfer Parties meet the following conditions and provide the following assurances, guarantees, and warranties to the City in writing, expressly for the benefit of the City, in a form acceptable to the Department and the City Attorney, and no later ninety (90) calendar days before the effective date of the Affiliate Transfer, and:

(a) The Grantee is not in Material Breach of the Franchise, this Code or a UCP and there have been no more than two minor breaches of the Franchise, this Code, or a UCP as determined pursuant to Article VIII of this Chapter, in the prior twelve (12) month period; and

(b) The proposed Transferee (1) has demonstrated to the City's reasonable satisfaction that it is reputable and capable, financially and otherwise, of performing each of the Grantee's obligations under the Franchise and any other documents to be assigned; and (2) is not forbidden by Applicable Law from transacting business or entering into contracts with the City; and (3) is subject to the jurisdiction of the courts of the State of California; and (4) is not in default with respect to any obligations that it has to City, and

(c) Any Person guaranteeing the performance of the Grantee under the Franchise (or any other Person approved by the Department and the City Attorney) guarantees in a substantially similar manner the performance of the proposed Transferee; and

(d) The Transfer Parties warrant that the Transfer is being made for a legitimate business purpose and not to deprive the City of the benefits of the Franchise, any other documents proposed to be Transferred, or other Applicable Law; and

(e) The proposed Transferee warrants that it has read, accepts, and agrees to be bound by each and every term of the Franchise, any other documents to be Transferred, and other Applicable Law then in effect; and

(f) The proposed Transferee agrees to assume all responsibility for all liabilities, acts, and omissions known and unknown of each of its predecessor Grantees for all purposes, including renewal of the Franchise, and to cure all defects; and

(g) The proposed Transferee agrees that the Transfer will not permit it to take any position or exercise any right which could not have been exercised by the Grantee; and

(h) The Transfer Parties warrant that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the proposed Transferee (the warranty to be based upon comparing the burdens upon and resources that will be available to the proposed Transferee compared to the Grantee), or otherwise adversely affect the ability of the proposed Transferee to perform its commitments under the Franchise; and

(i) The Transfer Parties warrant that the Transfer will not in any manner adversely affect the City or Subscribers (including by increasing rates); and

(j) The proposed Transferee agrees that the Transfer does not affect any evaluation of its legal, financial, or technical qualifications that may arise under the Franchise or other Applicable Law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

(iii) The Transfer Parties notify the City within thirty (30) City business days that the Transfer is complete and provide copies to the Department of all fully executed documents reflecting the Transfer.

(2) **Transfer Proposal May Be Required.** If the Transfer Parties are unable to provide information and assurances in a form acceptable to the Department and the City Attorney as provided in Subsection (e)(1)(ii) above, the Department, in its sole discretion, may require the immediate submission of a Transfer Proposal to the Board for its approval pursuant to this Section. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.15. CABLE SYSTEM RENEWAL PROPOSALS.

(a) **Initial Proceeding.** Notwithstanding the provisions of Section 11.10 above, within six (6) months of the City's receipt of a written Cable System Franchise renewal notice pursuant to 47 U.S.C. Section 546(a), or upon the Director's own motion, the Director of the Department shall initiate a proceeding pursuant to that Section to identify the City's future cable-related community needs and interests and to review the performance of the Cable System Operator under its current Franchise.

(b) **Request for Proposal.** Based upon the proceeding initiated pursuant to subsection (a) above, and such other investigation as the Department deems necessary, the Department shall prepare a report for the Board proposing findings regarding the future cable-related community needs and interests of the City and the past performance of the Operator of the Cable System Franchise. The report shall include a proposed request for proposal to renew the Cable System Franchise ("Request For Renewal Proposal") pursuant to terms and conditions consistent with the report's proposed findings. The Director shall serve the renewal Applicant with a copy of the report and proposed Request For Renewal Proposal concurrently with the Director's submission to the Board. The Board may adopt the findings of the report by resolution and urge the Director to issue the Request For Renewal Proposal. Issuance of such a Request For Renewal Proposal shall constitute closing of the proceeding.

(c) **Department Recommendation Regarding a Renewal Proposal.** The Request For Renewal Proposal shall, among other things, establish the soonest date and the latest date on which the Department will accept a Renewal Proposal. The Director of the Department shall provide prompt public notice of receipt of a Renewal Proposal and shall evaluate the Renewal Proposal and forward a recommendation to the Board stating either: (1) that the Franchise should be renewed pursuant to the terms of the Renewal Proposal, or (2) that, as a prelimi-

nary matter, the Franchise should not be renewed, and the City should initiate an administrative proceeding pursuant to 47 U.S.C. Section 546(c) to evaluate the issues set forth in that Section. The Director's recommendation shall include a proposed ordinance or resolution consistent with the Director's recommendation. The Director shall serve the renewal Applicant with a copy of the recommendation and proposed ordinance or resolution concurrently with the Director's submission to the Board.

(d) **Board Action on the Director's Recommendation.** The Board shall take action within the time required by 47 U.S.C. Section 546(c) by adopting either: (1) an ordinance to renew the Franchise pursuant to the terms set forth in the Renewal Proposal; or (2) a resolution making a Preliminary assessment that the Franchise should not be renewed on the terms set forth in the Renewal Proposal and urging the Director of the Department to commence an administrative proceeding pursuant to 47 U.S.C. Section 546(c).

(e) **Administrative Proceeding.** In the event the Board adopts a resolution making a Preliminary assessment that the Franchise should not be renewed pending the results of an administrative proceeding pursuant to 47 U.S.C. Section 546(c), the Director of the Department shall designate a hearing officer(s) and the Department shall administer the hearing consistent with the requirements of that Section. Within forty-five (45) City business days of the conclusion of the hearing, the hearing officer(s) shall issue a proposed recommendation to grant or deny the Renewal Proposal. The proposed recommendation shall be based upon the record of the proceeding and include a summary of the issues, the evidence presented, and findings and conclusions. It shall also include a proposed ordinance or resolution for the Board's consideration. Copies of the proposed recommendation shall be served upon the parties to the hearing by certified mail. A notice that a copy of the proposed recommendation is available for inspection during normal business hours shall be posted at the office of the Director of the Department. The proposed recommendation shall be a recommen-

dation to the Director, and the Director shall adopt, modify, or deny such recommendation and prepare a final recommendation on the matter based upon the record of the proceeding. Such final recommendation shall be served upon the parties to the hearing and posted in the same manner as provided for the proposed recommendation herein.

(f) **Final Board Action.** The final recommendation of the Director shall be a recommendation to the Board, and the Board shall act to adopt, modify, or deny such recommendation and issue a final decision on the matter based upon the record of the proceeding. A decision to deny the Renewal Proposal shall be by resolution. A decision to grant the Renewal Proposal shall be by ordinance. The Board's decision on the Renewal Proposal shall state the reasons therefor and shall be final and conclusive.

(g) **Suspension of Hearing.** Nothing herein shall preclude the Director from suspending the proceeding in the event the Department and the Cable System Operator reach agreement regarding proposed renewal of the Franchise. In the event the Board does not approve such proposal, the Director may resume the proceeding. Board approval of the proposal shall constitute termination of the proceeding. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.16. FRANCHISE REVOCATION.

(a) **Revocation for Failure to Comply with the Franchise or this Chapter.** In the event of a Material Breach of the Franchise or this Chapter the City may Revoke a Grantee's Franchise.

(b) **Revocation Recommendation.** In the event the Department believes that a Grantee has committed a Material Breach of its Franchise, the Department shall notify the Grantee in writing that the Grantee must comply with any requirement with which the Grantee has failed to comply and pay any fines or damages owed as a result of the Material Breach. The Grantee shall have twenty (20) City business days to respond to the Department's notice. Thereafter, the Department may recommend Re-

vocation of the Franchise to the Board if it concludes that the Grantee has committed a Material Breach and

(1) The Material Breach is incurable (as in the case with fraud or attempted fraud); or

(2) The Grantee has, after twenty (20) City business days of the written notice from the Department:

(i) Failed to comply with the requirement; or

(ii) If compliance will take more than twenty (20) City business days, even with the exercise of due diligence, failed to agree to a compliance plan acceptable to the City.

(c) Board Proceeding Regarding Revocation.

(1) The Board may consider the Department's Revocation recommendation and may hear any Persons interested therein, and may determine whether (i) Grantee committed a Material Breach; and (ii) if Grantee committed a Material Breach, whether such Material Breach was or should be excused. The Grantee shall be noticed and have an opportunity to be heard at a Board proceeding to consider the Department's Revocation recommendation.

(2) If the Board determines Grantee has committed a Material Breach, but such Material Breach is excused, the Board may, by motion, direct the Grantee to comply with the City's requirements within such time, and upon such terms and conditions, as the Board deems reasonable. If the Board determines Grantee has committed a Material Breach and such Material Breach is not excused, the Board may, by ordinance, Revoke Grantee's Franchise. Nothing herein precludes the Board from setting additional time for Grantee to cure a Material Breach in lieu of Revocation. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.17. TERMINATION.

Upon Termination of a Franchise, the City may, by ordinance, acquire ownership or effect a Transfer of the Facilities, or any portion thereof,

for which the Grantee shall be compensated, consistent with Applicable Law. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.18. REMOVAL OF FACILITIES.

Upon Termination of a Franchise, or abandonment of any portion of the Facilities, the City may require a Grantee, by Board resolution, to remove all or a portion of its Facilities at Grantee's expense and to restore City property as required by City and consistent with Applicable Law. If the Grantee fails to do so within a reasonable period of time, the City shall be entitled to remove the Facilities and restore City property on behalf of Grantee and charge the reasonable costs actually incurred, including but not limited to administrative costs, to Grantee. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.19. FORECLOSURE/ASSIGNMENT FOR CREDITOR'S BENEFIT/APPOINTMENT OF A RECEIVER.

The following events shall constitute a Material Breach of this Chapter or a Franchise:

(1) Foreclosure or other judicial sale of any of the Facilities, equipment or property of a Grantee in the Franchise Area necessary for the provision of the Service for which the Franchise was granted where the Bona Fide Institutional Lender does not enter into an operating agreement for the use and operation of the Facilities with an Operator approved by the City in writing, in a form acceptable to the City Attorney; or

(2) An assignment for the benefit of creditors; or

(3) The appointment of a receiver or trustee to take over the business of the Grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.20. CONFIDENTIALITY OF PROPRIETARY INFORMATION.

The City shall provide an Applicant the opportunity to protect from disclosure to the public

any information contained in a Proposal that is proprietary, trade secret or is otherwise protected from disclosure under the California Public Records Act (Cal. Gov't Code Section 6254, et seq.), the City's Sunshine Ordinance (S.F. Admin. Code Chapter 67) and other Applicable Law by (a) permitting an Applicant to submit the information under seal; and (b) making reasonable efforts to notify an Applicant in advance if the City determines that it must disclose any information provided under seal or clearly and obviously identified as proprietary, trade secret, or otherwise protected from disclosure. In the event the City seeks to disclose, or receives a request for disclosure of such information, the City shall inform the affected Applicant either that the City will refuse to disclose the protected information or, if there is no proper basis for such refusal, that the City intends to disclose the information unless ordered otherwise by a court. Nothing herein shall require the City to take any action, or to refuse to release information where to do so would violate Applicable Law. The City's obligations under this Section are limited to confidential, trade secret or otherwise protected information that is provided to the City in a sealed envelope and identified on the envelope and on the face of each page of the document as proprietary, trade secret or otherwise protected from disclosure, and that is accompanied by a written certification from the Applicant that it believes, in good faith, that such information is protected from disclosure. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

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ARTICLE II: FRANCHISE FEES

- Sec. 11.21. Amount.
- Sec. 11.22. Payment.
- Sec. 11.23. Grantee Responsibility for Fees of Third Parties.
- Sec. 11.24. Franchise Fees Owed by Gas and Electric Grantees.
- Sec. 11.25. Acceptance of Payment Not a Release.
- Sec. 11.26. Fee Disputes.
- Sec. 11.27. Failure to Pay.
- Sec. 11.28. Franchise Fee Not in Lieu of Taxes.

SEC. 11.21. AMOUNT.

(a) **Grantee Fees.** In consideration of the grant and exercise of a Franchise to construct, install, operate, or provide Services using, Facilities in the Public Rights-of-Way, a Grantee shall pay to the City a Franchise Fee expressed as a percentage of Gross Revenues or some other measure. The Franchise shall specify the fee to be paid, and the Gross Revenues to be included in the fee calculation. If a Franchise granted pursuant to this Chapter specifies a Franchise Fee established as the result of limiting Applicable Law, the City shall have the option to renegotiate the amount of the Franchise Fee upon a change in Applicable Law pursuant to the process set forth in Section 11.70 below. In considering changes to the Franchise Fee amount, the City shall consider the impact on consumers of any pass through that may be permitted. Nothing herein requires a Person to pay amounts in excess of any limits that may be established by state or federal law.

(b) **UVPP Fees.** A UVPP that provides Services using a Cable System for which charges are assessed to Subscribers, but are not received by the Cable System Grantee, shall pay a fee in lieu of a Franchise Fee on such Service pursuant to the Franchise Fee calculation contained in the Cable System Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.22. PAYMENT.

Unless otherwise specified in a Franchise, Grantees and Operators shall pay the Franchise Fee due to the City on a quarterly basis. Payment for each quarter shall be made to the City Controller not later than forty (40) City business days after the end of each calendar quarter. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.23. GRANTEE RESPONSIBILITY FOR FEES OF THIRD PARTIES.

A Grantee shall fully cooperate with the City in collection of Franchise Fees owed to the City by any Person using the Grantee's Facilities. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.24. FRANCHISE FEES OWED BY GAS AND ELECTRIC GRANTEEES.

Nothing in this Chapter is intended to waive the City's authority to collect franchise fee surcharges pursuant to Division 3, Chapter 2.5 of the California Public Utilities Code. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.25. ACCEPTANCE OF PAYMENT NOT A RELEASE.

No acceptance by the City of any Franchise Fee payment shall be construed as an accord that the amount paid is in fact the correct amount owed, nor shall such acceptance of such Franchise Fee payment be construed as a release of any claim the City may have for additional sums payable. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.26. FEE DISPUTES.

In the event of any good faith dispute between a Person owing Franchise Fees and the City regarding the amount of Franchise Fees owed the City, the Person alleged to owe the Franchise Fees shall place the amount in dispute

in an escrow fund from which, once the dispute is resolved, the Franchise Fees plus interest at the rate of the City's pooled funds shall be paid to the appropriate party. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.27. FAILURE TO PAY.

In the event that a Franchise Fee payment is not received by the City on or before the due date set forth herein, or is underpaid (except for Franchise Fees placed in an escrow fund pursuant to Section 11.26 above), the Person subject to the fee will be charged interest on the amount due from the due date at an interest rate equal to 1.5% per month, compounded on an annual basis. A Person's failure to (a) place any disputed amount of Franchise Fees in an escrow fund pursuant to Section 11.26 above; or (b) make two successive quarterly Franchise Fee payments to the City shall constitute a Material Breach of Grantee's Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.28. FRANCHISE FEE NOT IN LIEU OF TAXES.

A Franchise Fee payment is not a payment in lieu of any tax, fee or other assessment of general applicability. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

ARTICLE III: PERMITS AND CONSTRUCTION

- Sec. 11.29. Compliance With Laws.
- Sec. 11.30. Maps and Plans.
- Sec. 11.31. Placement of Facilities.
- Sec. 11.32. Removal, Relocation, and Work-Arounds.
- Sec. 11.33. Abandonment.

SEC. 11.29. COMPLIANCE WITH LAWS.

(a) **Applicable Laws.** All work performed in the geographic boundaries of the City by a Grantee, including work not involving excavation and including work performed on both public and private property, shall be performed in compliance with this Chapter, the Franchise, and other Applicable Law, including, but not limited to the City's Municipal Code, (including the Public Works Code), and CPUC General Orders 95, 112, and 128. Grantee shall, at its sole expense, procure and maintain in force at all times during the term of its Franchise any and all business and other licenses or approvals necessary to construct Facilities and provide any Services in the City. Grantee shall obtain any necessary approvals regarding the impact that its Facilities may have upon the environment. Nothing in this Chapter or in any Franchise is intended to imply that such approvals will be issued.

(b) **Construction, Operation, and Maintenance Standards.** Experienced and properly trained maintenance and construction personnel shall perform the construction, operation and maintenance of Facilities in a manner consistent with industry standards and good engineering practices. In the event of a conflict among codes and standards, the most stringent applicable code or standard shall apply, except insofar as that standard, if followed, would result in Facilities that could not meet requirements of Applicable Law. A Grantee shall at all times employ reasonable care, within the meaning of Applicable Law, and shall install and maintain in use

commonly accepted methods and devices to prevent failures and accidents that are likely to cause damage, injury, or nuisance to the public. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.30. MAPS AND PLANS.

Grantee shall make a good faith effort to maintain current, accurate and complete plans and record drawings showing, in detail, all physical features of the Facilities, including, without limitation, the approximate location, depth, and size of its Facilities constructed or installed in the Public Rights-of-Way in relation to the adjoining property lines, and the services provided over the Facilities. Upon demand, such plans and record drawings shall be delivered to City, in a format acceptable to the City, within ten (10) City business days of a written request, or immediately, upon oral request and in whatever format is available, in the event of an emergency. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.31. PLACEMENT OF FACILITIES.

All privileges prescribed by a Franchise shall be subordinate to any prior lawful occupancy in the Public Rights-of-Way, and the City reserves the authority to designate where a Grantee's Facilities may be placed. A Grantee may not place Facilities inconsistent with the City's Public Works Code or the rules, regulations, or orders of the Department of Public Works or other Applicable Law, or in such a way as to interfere with public use of the Public Rights-of-Way. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.32. REMOVAL, RELOCATION, AND WORK-AROUNDS.

(a) **Grantee Must Remove, Relocate, Adjust, and/or Support Facilities to Accommodate City Needs.** The City reserves the right to

occupy the Public Rights-of-Way, or any part thereof, which is occupied or to be occupied by a Grantee's Facilities. When required to ensure the public health, safety, and welfare, a Grantee shall, at its own cost and expense, temporarily or permanently remove, relocate, adjust, and/or support the Facilities, or any part thereof, to such other location(s) in the Public Rights-of-Way, or in such manner, as appropriate, as may be designated or approved, in writing and in advance, by the City. The City may not unreasonably withhold Approval of any plan for removal, relocation, adjustment and/or support of the Facilities ordered pursuant to this Section. Such removal, relocation, adjustment and/or support shall be completed within the time prescribed by the City. If the Facilities are not removed, relocated, adjusted and/or supported in the manner and time prescribed by the City, the City may take all reasonable, necessary, and appropriate action, including removing the Facilities, and may charge the reasonable costs actually incurred, including, but not limited to, administrative costs, to Grantee.

(b) **Grantee Must Restore The Public Rights-of-Way.** Whenever the removal, relocation, adjustment, and/or support of Facilities is required pursuant to subsection (a) above, Grantee shall, after such work is complete, at its own cost and expense, promptly repair, restore and return the Public Rights-of-Way in which the Facilities were located, to a safe and satisfactory condition, as approved by the City in accordance with Applicable Laws. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.33. ABANDONMENT.

(a) **Notice of Abandonment.** Within three (3) months of the effective date of this Section, all Grantees shall provide a map to the Department of Public Works, in a form approved by the City, showing the location of those Facilities located in the Public Rights-of-Way that have been abandoned by Grantee. The map shall include street names and shall show the size and type of the abandoned facilities. Thereafter, Grantees shall provide updated maps to the Department of Public Works at the end of each calendar quarter

showing those Facilities in the Public Rights-of-Way abandoned by Grantee during the calendar quarter. For purposes of this Section, "abandon" and other similar terms mean that Facilities are no longer used by Grantee for any purpose authorized by a Franchise or by Section 7901 of the California Public Utilities Code.

(b) **City Determination Regarding Abandonment.** A director of a department may determine by department order that Facilities located in the Public Rights-of-Way, or any part thereof, have been abandoned. A Grantee shall promptly provide information to the Department, upon request, describing in detail the location and use of any Facilities under inquiry. Prior to the department director making an abandonment determination, the department shall provide Grantee written notice of its intent to deem the Grantee's Facilities abandoned. In the event the department cannot determine, after a good faith effort, the owner of the Facilities, notice shall be made by publication. A Grantee may appeal any department determination regarding abandonment by requesting an administrative hearing within ten (10) City business days of the effective date of such a determination, consistent with the provisions of Section 11.81 below.

(c) **Treatment of Abandoned Facilities.** In the event Grantee has notified the Department that it has abandoned any part of its Facilities, or the City's determination that Facilities have been abandoned has not been appealed pursuant to Section 11.81 below, at City's option, Grantee shall: (1) convey all or a portion of the abandoned Facilities to City at no cost; (2) leave all or a portion of the abandoned Facilities in place; or (3) promptly remove all or a portion of the abandoned Facilities and restore City Property as required by City, consistent with Section 11.18 above. In the event the City elects to have all or a portion of the Facilities conveyed to it, Grantee shall execute such documents of title in a form acceptable to the City Attorney as will convey to the City free and clear of liens and/or adverse claims of title all right, title, and interest in the abandoned Facilities, or any part thereof.

(d) **Abandonment May Be a Material Breach.** If a Grantee abandons a substantial portion of its Facilities so as to compromise the provision of Service under its Franchise, such abandonment may be a Material Breach of a Franchise.

(e) **Liability.** A Grantee shall assume all liability for abandoned Facilities unless and until title is conveyed to another Person consistent with any requirements of a Franchise or other Applicable Law or the City takes title to such Facilities pursuant to this Section.

(f) **Expedited Abandonment Determination.**

(1) **Request For Determination.** Notwithstanding the provisions of subsections (a) through (d) above, in the event that during an excavation a Person or City department discovers Facilities that appear to be abandoned and the Person or City department requests a determination of abandonment in order to: (1) avoid unnecessary excavation through use of the abandoned Facilities; (2) resolve an emergency situation, or (3) prevent significant delays or cost overruns on the excavation project, the Person or City department may request the Director of the Department of Public Works to issue an expedited abandonment determination.

(2) **Abandonment Order.** If demonstrated to be necessary to preserve the public health, safety and welfare, or for the public convenience and necessity, the Director of the Department of Public Works may issue an expedited abandonment determination in the form of a departmental order ("Order") and shall serve a copy of the Order by certified mail on the owner of the Facilities, or provide notice as set forth in subsection (4) below, if the owner is unknown. The Order shall set forth the City's proposed disposition of the Facilities.

(3) **Appeal And Final Order.** The owner of the Facilities shall have three (3) City business days from receipt of the Order to comply with or appeal the Order in writing on the basis that the Facilities are not abandoned. In the event of a request for appeal, the Department of Public Works shall hold an administrative hearing within

five (5) City business days of the request. If no appeal is requested, the Order shall become final upon passage of the time for appeal and the City may dispose of the Facilities as set forth therein.

(4) **Unknown Owner.** In the event the owner of the Facilities cannot be readily identified, the Director of the Department of Public Works shall post the Order at the excavation site and shall serve a copy of the departmental Order by certified mail on the following Persons: (1) all utility excavators installing Facilities in the Public Rights-of-Way within the last three (3) years of the discovery of the Facilities; and (2) after reviewing excavation permits issued within the last three (3) years, all Persons the Department of Public Works has reason to believe may have an ownership interest in the Facilities. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

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ARTICLE IV: REPORTING REQUIREMENTS

- Sec. 11.34. Financial Reports.
- Sec. 11.35. Service Provider List.
- Sec. 11.36. Documents Due Upon Filing.

SEC. 11.34. FINANCIAL REPORTS.

Unless otherwise provided in a Franchise, any Person subject to a Franchise Fee computed in relation to Gross Revenues shall file the following financial statements with the Controller:

(a) **Quarterly Statement of Gross Revenues.** Within forty (40) City business days of the end of each calendar quarter, a statement showing its Gross Revenues during the preceding quarter and the number of Subscribers served.

(b) **Annual Statement of Gross Revenues.** Within sixty (60) City business days of the end of its fiscal year, a statement setting forth the computation of Gross Revenues used to calculate the Franchise Fee for the preceding year and a detailed explanation of the method of computation showing Gross Revenues by category; and (ii) what, if any, deductions were made from Gross Revenues in calculating the Franchise Fee (e.g., bad debt, credits and refunds), and the amount of each deduction. The statement shall be certified by a certified public accountant, the chief financial officer of the Person liable for the fee, or such other Person who is authorized and qualified to make representations on behalf of the Person owing the Franchise Fees regarding its revenues.

(c) **Final Statement of Gross Revenues.** Within sixty (60) City business days following Termination of a Franchise, a final statement of Gross Revenues for the period from the beginning of the previous annual report through the end of the Franchise term, which statement shall contain the information and be certified in the same manner as required for an Annual Statement of Gross Revenues. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.35. SERVICE PROVIDER LIST.

A Grantee shall provide a list of all Persons using its Facilities to provide Service or sell a commodity, including UVPPs, to the Director of the Department each time that it makes a Franchise Fee payment to the City. Failure to submit an accurate list may constitute a Material Breach of the Franchise. Cable System Grantees shall not include leased access providers or public, educational, or government users of its Facilities on such a service-provider list. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.36. DOCUMENTS DUE UPON FILING.

A Grantee shall deliver the following documents to the Director of the Department concurrent with the filing of the documents or within seven (7) City business days of receipt by the reporting entity:

(a) Notices of deficiency, forfeiture, or foreclosure related to the Facilities in the Public Rights-of-Way;

(b) Any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or any Affiliate; and

(c) Any pledge in trust, mortgage or other encumbrance which has been recorded against or attached to the Grantee's Facilities, whether by act of the Grantee or otherwise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

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ARTICLE V: RECORD REVIEW, RETENTION, AND ACCESS RIGHTS

- Sec. 11.37. Applicability.
- Sec. 11.38. Access to Records.
- Sec. 11.39. Voluminous Materials.
- Sec. 11.40. Proprietary Documents.
- Sec. 11.41. Audit Results.
- Sec. 11.42. Five Year Retention.
- Sec. 11.43. Inspection.
- Sec. 11.44. Franchise Compliance Reports.

SEC. 11.37. APPLICABILITY.

All Persons required to pay a Franchise Fee to the City shall be subject to the provisions of this Article. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.38. ACCESS TO RECORDS.

The City shall have the right to inspect and copy at any time during normal business hours at the nearest office of a Person owing a Franchise Fee, or at such location within the City as the City may designate, all books and records reasonably necessary to monitor compliance with the terms of this Chapter, a Franchise, or other Applicable Law. This right includes the right to inspect not only the books and records of such a Person, but also any books and records related to the management of the Facilities or its operations held by an Affiliate or any other Operator, contractor, subcontractor or any Person holding any form of management contract for the Facilities. It shall be the obligation of a Person owing a Franchise Fee to make such books and records available to the City and to collect and produce the information requested by City. For purposes of this Article, the term "books and records" shall be read expansively to include information in whatever format stored. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.39. VOLUMINOUS MATERIALS.

If any books and records are too voluminous, or for security reasons cannot be copied and

moved, then the Person owing a Franchise Fee may designate a location mutually agreed to by the City and the Person at which the inspection shall take place, provided that (1) the Person must make necessary arrangements for copying documents selected by the City after its review; and (2) the Person must pay all travel and additional copying expenses incurred by the City (above those that would have been incurred had the documents been produced in the City) in inspecting those documents or having those documents inspected by its designee. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.40. PROPRIETARY DOCUMENTS.

Access to the books and records of a Person owing a Franchise Fee shall not be denied on the basis that said books and records contain proprietary information. Proprietary information received by the City from such a Person, and clearly marked as Proprietary pursuant to Section 11.20 above shall be treated as provided in that Section. Notwithstanding the provisions of Section 11.38 above, where the City concludes that maintaining copies of proprietary, trade secret, or otherwise protected materials is not reasonably required in order for the City to fairly determine a Person's compliance with the terms of this Chapter, a Franchise, or other Applicable Law, the City shall consider inspecting such information at the Person's local office, rather than copying and maintaining such information. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.41. AUDIT RESULTS.

If an audit reveals that a Person has underpaid Franchise Fees owed in an amount equal to or exceeding five (5) percent of the Franchise Fees actually paid (excluding Franchise Fees deposited in an escrow account pursuant to Section 11.26 above), and the Gross Revenues of

such Person exceed one million dollars (\$1,000,000) within any twelve (12) month period covered by the audit, the cost of the audit shall be borne by the Person owing the Franchise Fees. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.42. FIVE YEAR RETENTION.

Books and records required to be retained under this Chapter, a Franchise, or other Applicable Law shall be kept for at least five (5) years from the date such book or record was prepared. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.43. INSPECTION.

Facilities shall be subject to the right of periodic inspection by the City, without notice, to determine compliance with the provisions of this Chapter, the Franchise, or other Applicable Law. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.44. FRANCHISE COMPLIANCE REPORTS.

(a) **Controller's Report.** No less than every two (2) years, the Controller shall file a report with the Board analyzing whether each Person owing a Franchise Fee is complying with the audit, reporting requirements, and payment obligations contained in this Chapter and any Franchise.

(b) **Department's Report.** No less than every two (2) years, the Department shall file a report with the Board analyzing whether each Grantee is complying with all provisions of this Chapter and its Franchise, except for those addressed by the Controller's Report. The Department's Report shall also identify any Person who may be subject to this Chapter but has not complied with the obligation to obtain a Franchise or pay Franchise Fees.

ARTICLE VI: CABLE SYSTEM REQUIREMENTS

- Sec. 11.45. Applicability.
- Sec. 11.46. Customer Service Requirements.
- Sec. 11.47. Technical Requirements.
- Sec. 11.48. Rate Regulation.
- Sec. 11.49. Subscriber Privacy.
- Sec. 11.50. Type of Franchise.
- Sec. 11.51. Compliance With Customer Service Standards and Consumer Protection Laws.
- Sec. 11.52. Public Service Announcements in the Event of an Emergency.
- Sec. 11.53. Interconnection.

SEC. 11.45. APPLICABILITY.

In addition to satisfying requirements established in a Franchise, all of the provisions of this Article VI shall apply to Cable Systems providing Cable Service to Subscribers, except as prohibited by Applicable Law. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.46. CUSTOMER SERVICE REQUIREMENTS.

(a) **Non-Discriminatory Access to Service.** A Cable System Grantee shall provide Cable Service upon request to the City or any Person in the Required Service Area, at no more than the standard installation rate for all Subscribers, without charge for any line extension, regardless of whether extension of plant is required. A Cable System Grantee or UVPP shall not be required to provide Cable Service to any Subscriber who does not pay the applicable fees or charges, except as may be required by the terms of an applicable Franchise.

(b) **Inside Wiring.** The obligation to provide Cable Service includes the obligation to provide the inside wiring required to deliver the Cable Service to the customer premises equipment used to receive the Cable Service, at no more than the standard installation rate, so long

as the Grantee can obtain any necessary consent to access the premises. However, a Grantee or UVPP may not require a Subscriber or the City to use inside wiring provided by Grantee as a condition of receiving Service.

(c) **Exclusive Contracts.** A Cable System Grantee may not require a Subscriber or a building owner or manager to enter into an exclusive contract as a condition of receiving Service. Any exclusive contract executed after the effective date of the ordinance adopting this Chapter shall inform the Person executing the exclusive contract, in type of equal size and prominence to the rest of the contract: (1) that the Person cannot be denied Service for refusing to agree to an exclusive contract; and (2) that installation rates may be subject to regulation and they should contact the City's Department of Telecommunications and Information Services for additional information. The notice shall include a phone number and contact for the Department of Telecommunications and Information Services provided by the Director.

(d) **Month-to-Month Service.** Cable Services shall be available to Subscribers on a month-to-month basis.

(e) **Disconnection/Downgrades.** A Cable System Grantee or UVPP shall promptly disconnect from the Cable System or downgrade any Subscriber who so requests. No period of notice prior to voluntary termination or downgrade of Service may be required of Subscribers by any Grantee or UVPP. A Subscriber shall not be liable for any penalty, termination charge, or charge for Service after the date of any voluntary disconnection unless all of the following apply: (1) the Subscriber took Service pursuant to a bona fide promotional offering that offered the Subscriber reduced rates or increased Service if Service was taken for a designated period; and (2) the Service offering required the Subscriber to pay for disconnection if Service was terminated before the end of the Service period; and

(3) the disconnection fee does not exceed the difference between the price paid by the Subscriber for Service already received and the price the Subscriber would have paid if Service had been purchased at the standard price available to Subscribers; and (4) the disconnection fee was prominently displayed, and agreed to in writing by the Subscriber. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.47. TECHNICAL REQUIREMENTS.

(a) **Technical Standards.** All Cable Systems shall meet or exceed the technical standards set forth in 47 C.F.R. Subpart K (Sections 76.601—76.630) and any other applicable technical standards established by Applicable Law.

(b) **Tests.** A Cable System Grantee shall perform all tests necessary to demonstrate compliance with technical and performance standards established by its Franchise and other Applicable Law. Unless a Franchise or Applicable Law provides otherwise, all tests shall be performed following procedures prescribed by the Department. A written report of any test results shall be filed with the City within seven (7) City business days of a request by the City. If a location fails to meet technical or performance specifications, the Cable System Grantee shall, without requiring additional action by the City, promptly take corrective action, retest the locations until compliance is achieved, and report the results of its corrective action to the City. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.48. RATE REGULATION.

The City reserves all power to implement and impose regulation on a Cable System's rates and charges to the maximum extent permissible under Applicable Law. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.49. SUBSCRIBER PRIVACY.

Every Cable System Grantee or UVPP shall at all times protect the privacy of all Subscribers by implementing and complying with the provisions of 47 U.S.C. Section 551. A Grantee or

UVPP shall not condition the provision of Service on the Subscriber's grant of permission to disclose information which, pursuant to Applicable Law, cannot be disclosed without the Subscriber's explicit consent. Any notice provided to a Subscriber pursuant to subsection (a) of 47 U.S.C. Section 551 shall inform the Subscriber, in type of equal size and prominence to the rest of the notice: (1) that the Subscriber cannot be denied Service for failure to grant permission to disclose information requiring the Subscriber's consent; and (2) that the Subscriber shall have the right to prevent disclosure of his or her name and address. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.50. TYPE OF FRANCHISE.

A person holding a Cable System Franchise that is not for an OVS may not acquire an OVS Franchise for the same Facilities unless the Person applies for an OVS Franchise. Similarly, a Person holding an OVS Franchise may not acquire a Cable System Franchise that is not for an OVS unless the Person applies for an appropriate Franchise. In either case, the Person's acceptance of a new Franchise Pursuant to Section 11.13(j) above shall not be effective unless it includes an instrument in a form approved by the City Attorney surrendering the pre-existing Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.51. COMPLIANCE WITH CUSTOMER SERVICE STANDARDS AND CONSUMER PROTECTION LAWS.

A Cable System Grantee or UVPP shall, at all times, comply with all applicable customer service standards and consumer protection laws established by Applicable Law, including, without limitation, those established by the FCC at 47 C.F.R. 76.309. A Cable System Grantee or UVPP shall also comply with any additional customer service standards established by the City from time to time that exceed or address matters not addressed by the standards established by other Applicable Law and any consumer protection laws enacted by the City from

time to time that are not specifically preempted by other Applicable Law. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

**SEC. 11.52. PUBLIC SERVICE
ANNOUNCEMENTS IN THE EVENT OF
AN EMERGENCY.**

Every Cable System Grantee shall install and maintain an emergency alert system that can override audio and video on all channels to provide an emergency alert to Subscribers. Such an emergency alert system must be designed and maintained so that local officials designated by the City can activate the system remotely without the Grantee's assistance. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.53. INTERCONNECTION.

To the extent financially and technically possible and when requested by the City, a Cable System shall interconnect with another Cable System within or adjacent to the City and with any City-owned communications network for which the City requests interconnection, on fair, reasonable, and non-discriminatory terms for purposes of ensuring the full availability of access to public, educational, and government access signals. Such interconnection shall not give any Person the right to use or distribute another Person's Proprietary, commercial programming. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

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ARTICLE VII: MISCELLANEOUS PROVISIONS

- Sec. 11.54. City Reservation of Rights.
- Sec. 11.55. Compliance With All Applicable Law.
- Sec. 11.56. Liquidated Damages.
- Sec. 11.57. Acts at Grantee's Expense.
- Sec. 11.58. No Recourse for Grantee's Damages.
- Sec. 11.59. Insurance.
- Sec. 11.60. Security.
- Sec. 11.61. Fraud.
- Sec. 11.62. Local Office.
- Sec. 11.63. City May Perform Work.
- Sec. 11.64. Installation of City-Owned Communications Facilities.
- Sec. 11.65. Order of Precedence.
- Sec. 11.66. Indemnification.
- Sec. 11.67. Remedies Cumulative.
- Sec. 11.68. Eminent Domain.
- Sec. 11.69. No Representations.
- Sec. 11.70. Reopener.
- Sec. 11.71. Time Is of the Essence.
- Sec. 11.72. Severability.

SEC. 11.54. CITY RESERVATION OF RIGHTS.

Except where rights are expressly waived by the City in a Franchise, they are reserved, whether expressly enumerated or not. The City shall have the plenary authority to regulate Grantees, UVPPs, or Facilities as may now or hereafter be lawfully permissible pursuant to its police powers and municipal powers authority. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.55. COMPLIANCE WITH ALL APPLICABLE LAW.

(a) A Grantee or UVPP shall at all times be subject to and shall comply with the provisions of this Chapter, its Franchise, and all other Applicable Law.

(b) A Grantee or UVPP shall comply with 29 USC Section 151 et seq. which prohibits discrimination based on an employee's decision to form, join and/or participate in the activities of employee organizations of the employee's own choosing for the purpose of representation. A Grantee shall notify all contractors and subcontractors performing any work, labor or services on Grantee's behalf in the City and County of San Francisco that they must comply with this Section. Nothing in this section shall be interpreted or applied so as to create any duty or power in conflict with any Federal or State law.

(c) A Grantee may not discriminate or take any adverse action against any of its employees or the employees of any of its contractors or subcontractors performing work, labor or services on Grantee's behalf in the City and County of San Francisco in retaliation for speaking before or filing a complaint with any government agency or Court of Law in the City and County of San Francisco regarding the employee's good faith belief that the Grantee or its contractor or subcontractor has violated Federal, State or Local Law, or this franchise, or in informing, testifying or participating in any government agency or court sponsored proceeding in the City and County of San Francisco. Accordingly any internal policies, employee handbooks, directives, or codes of conduct shall not be construed to limit employees from informing, testifying before or participating in any government agency or court sponsored proceeding in the City and County of San Francisco regarding the employee's good faith belief that the Grantee or its contractor or subcontractor has violated Federal, State or Local Law, or this franchise. Nothing in this section shall be interpreted or applied so as to create any duty or power in conflict with any Federal or State Law.

(d) If any part or provision of this Section, or the application of this Section, to any person or circumstance, is held invalid, the remainder of

this Section, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Section are severable. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000; Ord. 61-06, File No. 051651, App. 4/6/2006)

SEC. 11.56. LIQUIDATED DAMAGES.

A Franchise granted pursuant to this Chapter shall require liquidated damages for specified breaches of the Franchise. The Franchise shall also provide that the City may withdraw any liquidated damages owed from the Grantee's security deposit pursuant to Section 11.60 below, if the Grantee has failed to secure such breach after ten (10) City business days notice from the City. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.57. ACTS AT GRANTEE'S EXPENSE.

Any act that a Grantee or UVPP is or may be required to perform under this Chapter, a Franchise, or other Applicable Law shall be performed at the Grantee or UVPP's expense, unless expressly provided to the contrary in this Chapter, the Franchise, or other Applicable Law. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.58. NO RECOURSE FOR GRANTEE'S DAMAGES.

No Person shall have recourse against the City for any loss, cost, expense, or damage arising out of the enforcement of any provision or requirement of this Chapter, a Franchise, or other Applicable Law. Notwithstanding the foregoing, nothing herein precludes a Person from seeking and obtaining any injunctive relief against the City. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.59. INSURANCE.

A Franchise granted pursuant to this Chapter shall require a Grantee to obtain insurance or self-insure as required by the City's Risk

Manager. Failure to provide or maintain any required insurance shall constitute a Material Breach of a Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.60. SECURITY.

(a) **Security for Subscribers and the City.** In addition to any bond and/or deposit requirements established by the City's Public Works Code, a Franchise granted pursuant to this Chapter shall require a Grantee to provide to the Department such cash deposits and any other security instrument(s) (including, without limitation, performance bonds and letters of credit) deemed necessary by the Risk Manager to guarantee Grantee's faithful performance of and compliance with all provisions of this Chapter, the Franchise, and other Applicable Law. A Franchise granted pursuant to this Chapter shall require separate cash deposits and other security instrument(s) to cover costs and damages incurred by the City and to cover costs and damages incurred by any Subscriber, including attorneys' fees and costs, as a result of Grantee's failure to comply with any provision of this Chapter, the Franchise, or other Applicable Law. A Grantee's failure to provide or maintain any required cash deposit and other security instrument(s) shall constitute a Material Breach of its Franchise.

(b) **Amount of Security Required.** The City's Risk Manager shall determine the amount and type of security required pursuant to subsection (a) above. Notwithstanding the foregoing, the Franchise may contain terms permitting the value of the cash deposit and other security instrument(s) to be reduced upon completion of a substantial portion of any construction obligation contained in a Franchise. At a minimum, the Franchise shall establish procedures whereby the City may unilaterally withdraw money from the cash deposit and security instrument(s) to pay monies owed by a Grantee to the City, and shall require a Grantee to replenish the cash deposit and security instrument(s) when such withdrawals are made. Within twenty (20) City business days of a Grantee's submission of its Annual Statement of Gross Revenues, the City

shall pay interest to the Grantee on any cash deposit held by the City pursuant to this Section at the rate of the City's pooled funds. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.61. FRAUD.

If a Grantee defrauds or attempts to defraud the City or Subscribers, or intentionally submits false or misleading information to the City, such actions may be deemed a Material Breach of the Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.62. LOCAL OFFICE.

Grantees providing retail Service to residential Subscribers shall maintain an office in the City to address Subscriber billing and other customer service-related issues. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.63. CITY MAY PERFORM WORK.

Upon Grantee's failure, refusal, or neglect to perform any work or other act required by this Chapter, its Franchise, or other Applicable Law within any time prescribed therefor, the City may cause such work or other act to be completed in whole or in part, and upon so doing shall submit to Grantee an itemized statement of the costs thereof. The Grantee shall, within twenty (20) City business days after receipt of such statement, pay to the City the entire amount thereof. In event Grantee fails to make such payment, or any other payment due the City under this Chapter, the monies shall be charged against Grantee's deposit or other security instrument(s) as provided pursuant to Section 11.59 above. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.64. INSTALLATION OF CITY-OWNED COMMUNICATIONS FACILITIES.

Unless precluded by Applicable Law, at a City department's timely request consistent with the excavation coordination process set forth in Section 2.4.11 of the City's Public Works Code, a Grantee excavating in the Public Rights-of-Way or on other City Property shall install City-

owned communications Facilities, including, without limitation, conduit, fiber, and/or hand holds, in the excavation site at a charge to the City of the incremental costs incurred for such installation, including, without limitation, any additional design costs necessary to install the City-owned Communications Facilities. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.65. ORDER OF PRECEDENCE.

Except as precluded by Applicable Law, to the extent the provisions of this Chapter, a Franchise, or other Applicable Law are in conflict, the provisions which impose the higher or greater legal duty or obligation upon a Grantee or UVPP shall take precedence, unless a different order of precedence is expressly set forth in a Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.66. INDEMNIFICATION.

In addition to an indemnification provision required by the City's Risk Manager, a Franchise granted pursuant to this Chapter shall require a Grantee to indemnify the City for any costs associated with defending the award of a Franchise to Grantee. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.67. REMEDIES CUMULATIVE.

All remedies under this Chapter, a Franchise, or other Applicable Law are cumulative unless otherwise expressly stated. The exercise of one remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Grantee of its obligations to comply with this Chapter, its Franchise, or other Applicable Law. Remedies may be used singly or in combination. In addition, the City may exercise any rights it has at law or in equity. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.68. EMINENT DOMAIN.

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the City's exercise of the right of eminent domain

or to grant a right of eminent domain to any Person. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.69. NO REPRESENTATIONS.

No reference herein, or in any Franchise, to a "Public Rights-of-Way" shall be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and a Grantee shall be deemed to gain only those rights to use as are vested in the City. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.70. REOPENER.

Every Franchise granted pursuant to this Chapter shall contain a provision requiring that the City and Grantee shall amend the Franchise to assure that each party receives the benefit of the bargain intended under the Franchise in the event that: (1) any provision of a Franchise is preempted by Applicable Law; or (2) the parties agree in the Franchise that any other matter will trigger such renegotiation rights. The provision shall permit either Party to request negotiations to implement the provision and shall provide for a dispute resolution process to be available to either party forty (40) City business days after a request for negotiations in the event that the parties are unable to mutually agree on how to revise the Franchise to properly redistribute the benefits of the bargain. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.71. TIME IS OF THE ESSENCE.

Time shall be of the essence for any Franchise. A Grantee or UVPP shall not be relieved of its obligation to comply promptly with any of the provisions of a Franchise or this Chapter by any failure of the City to enforce prompt compliance. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.72. SEVERABILITY.

If any part of this Chapter, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Chapter, including

the application of such part or provision to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

ARTICLE VIII: VIOLATIONS OF THIS CHAPTER, A FRANCHISE, OR A UTILITY CONDITIONS PERMIT

- Sec. 11.73. Duty to Identify Potential Violations.
- Sec. 11.74. Complaints of Alleged Violations of this Chapter or a Franchise.
- Sec. 11.75. Notice of Violation.
- Sec. 11.76. Notice Imposing Administrative Penalties and Enforcement Costs.
- Sec. 11.77. Amount of Administrative Penalties.
- Sec. 11.78. Enforcement Costs.
- Sec. 11.79. Accrual of Penalties and Costs.
- Sec. 11.80. Finality of the Department's Determination and Collection of Assessed Penalties and Costs.
- Sec. 11.81. Administrative Review.
- Sec. 11.82. Deposit of Penalties.
- Sec. 11.83. Suspension of Action on Permit Applications.

SEC. 11.73. DUTY TO IDENTIFY POTENTIAL VIOLATIONS.

The Department of Public Works and the Department shall identify potential violations of this Chapter, a Franchise, or a UCP. In consultation with the City Attorney's Office, the Department shall take appropriate action to resolve violations of this Chapter, a Franchise, or a UCP. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.74. COMPLAINTS OF ALLEGED VIOLATIONS OF THIS CHAPTER OR A FRANCHISE.

(a) **Filing A Complaint.** Any Person affected by any alleged violation of any provision of this Chapter, a Franchise, or a UCP may file a formal complaint with the Department. The complaint shall contain the following:

(1) The name and address of the complainant;

(2) The nature and location of the alleged violation;

(3) The manner in which the complainant was affected;

(4) The provisions of this Chapter, a Franchise, or a UCP allegedly violated; and

(5) The specific action which complainant requests.

(b) **Hearing in Response to Complaints.** If, upon receipt and investigation of a complaint, the Department finds no basis for concluding that a violation of this Chapter, a Franchise, a UCP, or other Applicable Law has occurred, the complainant will be notified and no further action need be taken. The Department may hold a hearing based on the allegations of the complaint or at the request of the Person alleged to be responsible for a violation where it determines that such a hearing would facilitate the Department's determination of whether a violation has occurred. The Department shall provide ten (10) City business days written notice to the complainant and the Person alleged to be responsible for the violation if it determines to hold such a hearing. Such notice shall set forth the time and place of such hearing and shall notify the complainant and the Person alleged to be responsible for the violation that they will have an opportunity to be heard and to present evidence at the hearing. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.75. NOTICE OF VIOLATION.

If the Department believes a violation of this Chapter, a Franchise, or a UCP has occurred, either as the result of a complaint filed pursuant to Section 11.74 above, or through any other means independent of that process, which, after consultation with the City Attorney, the Department determines does not warrant Franchise revocation pursuant to Section 11.16 above, or action pursuant to Section 11.5 above, the De-

partment shall serve a written notice of violation upon the Person responsible for the violation. The notice of violation shall contain specific allegations, setting forth the violations of this Chapter, a Franchise, or a UCP, shall specify the manner in which the violation must be remedied, and shall state whether the Department intends to seek suspension of excavation permits pursuant to Section 11.83 below. The responsible Person shall have ten (10) City business days to correct or otherwise remedy the violation. The responsible Person may contact the Department, if necessary, to discuss the violation. For violations that create an imminent danger to public health, safety, or welfare, the Department shall have the authority to: (1) remedy the violation and charge the costs of such remedy to the responsible Person; or (2) notify the responsible Person to immediately remedy the violation. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.76. NOTICE IMPOSING ADMINISTRATIVE PENALTIES AND ENFORCEMENT COSTS.

If a Person fails to remedy a violation within the time specified in a notice of violation issued pursuant to Section 11.75 above, the Department shall provide written notice to the responsible Person if the Department intends to impose administrative Penalties or enforcement costs. This notice shall include the amount of the penalties and an estimate of the enforcement costs that will be due, and declare that such penalties and costs are due and payable to the City Treasurer within twenty (20) City business days. The notice also shall state that the violator has the right, pursuant to Section 11.81 below, to request administrative review of the Department's determination. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.77. AMOUNT OF ADMINISTRATIVE PENALTIES.

Any Person who fails to comply with a notice of violation issued pursuant to Section 11.75 above for violation of this Chapter may be liable for an administrative penalty consistent with

the procedure set forth in Section 11.76 above. The imposition of administrative penalties is within the discretion of the Department. The Department may assess an administrative penalty of up to one thousand dollars (\$1,000.00) per day, per violation. In assessing the amount of the administrative penalty, the Department may consider any one or more of the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the responsible Person's misconduct, and the responsible Person's assets, liabilities, and net worth. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.78. ENFORCEMENT COSTS.

In addition to any administrative penalty assessed pursuant to this Article, the Department may assess the responsible Person the reasonable enforcement costs incurred by the Department, including reasonable attorneys' fees. The imposition of enforcement costs is within the discretion of the Department. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.79. ACCRUAL OF PENALTIES AND COSTS.

Penalties and costs assessed pursuant to this Article shall continue to accrue against the responsible Person until the violation is corrected or otherwise remedied in the judgment of the Department. A timely request for administrative review or appeal shall stay the accrual of penalties and costs until a final determination concerning the violation is issued by the Department. In the event of a final determination adverse to the responsible Person, the responsible Person shall pay the penalties and costs set forth in an accounting from the Department within ten (10) City business days of receipt of the accounting, or such penalties and costs will continue to accrue from the date the accounting was received. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.80. FINALITY OF THE DEPARTMENT'S DETERMINATION AND COLLECTION OF ASSESSED PENALTIES AND COSTS.

If no request for administrative review is filed pursuant to Section 11.81 below, the

Department's determination shall be final. Thereafter, if the penalties and costs are not paid within the time specified in the notice, the Department may pursue any method of collection of such penalties and costs authorized by Applicable Law, including but not limited to deductions from any deposit or other security instrument held by the City, and any civil action. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.81. ADMINISTRATIVE REVIEW.**(a) Request for Administrative Review.**

Any Person that is designated as the party responsible for a violation may seek administrative review of the matter within ten (10) City business days of the date of the notice imposing administrative penalties, or if no notice imposing administrative penalties is issued, within twenty (20) City business days of a notice of violation. Administrative review shall be initiated by filing with the Director of the Department a request for review that specifies in detail the basis for contesting the notice of violation, the designation of the responsible party, or the assessment of the administrative penalties or enforcement costs.

(b) Notice for and Scheduling of Administrative Review Hearing. Whenever administrative review is requested pursuant to subsection (a) above, the Department within ten (10) City business days of receipt of the request, shall notify the affected parties of the date, time, and place of the administrative review hearing by certified mail. Such hearing shall be held no later than thirty (30) City business days after the Director of the Department receives the request for administrative review, unless time is extended by mutual agreement of the affected parties.

(c) Submittals for the Administrative Review Hearing. The Department shall appoint a hearing officer for the administrative review hearing. At least three (3) City business days prior to the hearing, the parties to the hearing shall submit written information to the hearing officer including, but not limited to, the following: a statement of the issues to be determined by the hearing officer, a statement of the

evidence to be offered at the hearing and the identity of any witnesses to appear at the hearing.

(d) Conduct of the Administrative Review Hearing. The administrative review hearing shall be open to the public, shall be published at least seventy-two (72) hours in advance, and shall be tape-recorded. Any party to the hearing may, at its own expense, cause the hearing to be recorded by a certified court reporter. During the hearing, evidence and testimony may be presented to the hearing officer.

(e) Proposed Decision. The hearing officer shall issue a proposed decision including a summary of the issues and the evidence presented, and findings and conclusions, within ten (10) City business days of the conclusion of the administrative review hearing. Copies of the proposed decision shall be served upon the parties to the hearing by certified mail. A notice that a copy of the proposed decision is available for inspection during normal business hours shall be posted at the office of the Director of the Department. The proposed decision shall be a recommendation to the Director, and the Director shall adopt, modify, or deny such recommendation and prepare a final decision on the matter. Such final decision shall be served upon the parties to the hearing and posted in the same manner as provided for the proposed decision herein. The Director's decision shall be a final administrative determination following five (5) City business days of notice to the parties. Grantee may appeal such decision pursuant to California Code of Civil Procedure Section 1094.5. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.82. DEPOSIT OF PENALTIES.

Any penalties assessed and recovered in an action brought pursuant to this Article shall be deposited in a special account, to be known as the Subscriber Service Account, to be used for the purpose of promoting the interests of Subscribers in the City. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

**SEC. 11.83. SUSPENSION OF ACTION
ON PERMIT APPLICATIONS.**

For good cause to protect the public health, safety and welfare, the Director of the Department may request the Director of the Department of Public Works to suspend issuance of excavation permits to a Person who is determined, after notice and a hearing, to be in violation of this Chapter or a Franchise. (Added by Ord. 58-00, File No. 000198, App. 4/7/2000)

**ARTICLE IX: DEPARTMENT OF TELECOMMUNICATIONS
AND INFORMATION SERVICES/TELECOMMUNICATIONS COMMISSION**

- Sec. 11.84. Findings and Purpose.
- Sec. 11.85. Definitions.
- Sec. 11.86. Establishment of Department;
Powers and Duties.
- Sec. 11.87. Establishment of Commission.
- Sec. 11.88. Commission Powers and Duties.
- Sec. 11.89. Commission Meetings.

SEC. 11.84. FINDINGS AND PURPOSE.

(a) Technological innovations are making a variety of new audio, video and data transfer telecommunications technologies available. Many existing and new telecommunications systems require the placement of facilities under, on, and over the City streets and on both private and public structures to provide telecommunications services to subscribers and users. Substantial public concern has been raised as to the appropriateness of the City's approval process for these requests. The increased number of telecommunications suppliers seeking to locate these facilities in the streets increases burdens on the physical infrastructure of the streets, as well as increasing the administrative work load of various City agencies in evaluating the impact of these facilities. In order to manage these increased burdens, the City must expand its planning for the use of the streets, foster public-private cooperation, ensure that the public receives fair compensation for ongoing and comprehensive use of public property by private entities, and ensure that the City's regulations regarding the use of the streets are adequate to protect the health, safety and welfare of City residents and that administrative costs are covered.

(b) Within the limits of preemptive federal and/or State law, the City should do everything possible to promote open and fair competition among telecommunications providers within the City; to ensure that new telecommunications services are made available to San Francisco

residents and businesses on a fair and nondiscriminatory basis; to ensure that the principle of universal access to telecommunications services is upheld within the City; to ensure that public, educational and municipal access to video programming channels is preserved; to promote the safe and efficient use of the streets by telecommunications providers; to ensure that new telecommunications technologies do not interfere with the City's emergency communications systems; to ensure that the public receives fair compensation for the use of the public rights-of-way and the costs of approving and, if necessary, monitoring, the various devices sought to be installed by telecommunications providers; and to ensure that the City itself has access to telecommunications services which improve public safety, public access to government and the efficient delivery of public information and services.

(c) In light of the developments and circumstances described above, the Board finds it necessary and appropriate to promote the public health, safety and general welfare by creating a Department of Telecommunications and Information Services and to create a Telecommunications Commission and to create a Telecommunications Commission. (Added by Ord. 293-96, App. 7/17/96; amended by Ord. 58-00, File No. 000198, App. 4/7/2000; Ord. 203-04, File No. 040752, App. 8/5/2004)

SEC. 11.85. DEFINITIONS.

For purpose only of this Article IX, the following words shall have the meanings given herein:

(a) "Article" means Article IX of Chapter 11 of the San Francisco Administrative Code.

(b) "Board" means the San Francisco Board of Supervisors.

(c) "Charter" means the Charter of the City and County of San Francisco.

(d) "City" means the City and County of San Francisco.

(e) "Commission" means the Telecommunications Commission created by this Article.

(f) "Department" means the Department of Telecommunications and Information Services created by this Article.

(g) "Telecommunications" means the one- or two-way transmission of messages, information, and/or programming by electronic means, including the provision of facilities for the generation, transmission, switching, signaling, control and/or reception of messages, information and/or programming; provided however that "telecommunications" shall not mean broadcasting as defined in 47 U.S.C. Section 153(o). (Added by Ord. 293-96, App. 7/17/96; amended by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.86. ESTABLISHMENT OF DEPARTMENT; POWERS AND DUTIES.

(a) There is hereby created a Department of Telecommunications and Information Services within the executive branch which shall consist of a Director and such officers and employees as are authorized pursuant to the budgetary and fiscal provisions of the Charter. The Director shall serve as appointing officer for the Department.

(b) The Department shall assume responsibility for:

(1) All functions previously performed by the Department of Electricity and Telecommunications, including all functions assigned by Chapters 22 and 22B of the Administrative Code;

(2) All functions previously performed by the Information Services Division of the Controller's office;

(3) Negotiating and recommending to the Board cable television franchises;

(4) Regulating rates for cable television service, consistent with Applicable Law and subject to approval of the Mayor and the Board of Supervisors;

(5) Ensuring good customer service by each Cable Service Operator;

(6) Overseeing the use and operation of the cable television public, educational and governmental access channels;

(7) Reviewing every 36 months and revising as necessary the Telecommunications Plan adopted by the Board in January 2002. The Telecommunications Plan should propose City policies and procedures to guide the establishment of technologies within the City, facilitate the deployment of new technologies within the City, maximize the availability of telecommunications services to City residents, businesses and departments, preserve City property and resources, and protect the health, safety, and welfare of City residents. Before proposing any revision to the Telecommunications Plan, the Department shall consult with the public, including residents and independent experts. Any revision shall be submitted to the Mayor and the Board for adoption; and

(8) Providing staff support to the Telecommunications Commission; and

(9) All additional functions assigned by the Mayor pursuant to Section 4.132 of the Charter. (Added by Ord. 293-96, App. 7/17/96; amended by Ord. 58-00, File No. 000198, App. 4/7/2000; Ord. 203-04, File No. 040752, App. 8/5/2004)

SEC. 11.87. ESTABLISHMENT OF COMMISSION.

(a) **Establishment of Commission.** A Telecommunications Commission for the City and County of San Francisco is hereby created consisting of five voting members.

(b) **Appointment of Commissioners.** Commission members shall be appointed by the Mayor, subject to approval or rejection by Resolution of the Board. Members may be removed by the Mayor. No person shall be eligible to serve as a member who is a telecommunications provider or is employed by a telecommunications provider within the City that may have business before the Commission.

(c) **Composition of Commission.** Appointments, qualifications and composition of the Commission shall be consistent with the requirements of Section 4.101 of the Charter. At least

one member of the Commission shall be drawn from among people with expertise in fields related to the Commission's work, including, but not limited to telecommunications management and telecommunications engineering. At least one member of the Commission shall represent the public, educational and government access to telecommunications and information services technologies. At least two members shall represent the interests of consumers and the general public.

(d) **Terms of Office.** The Mayor shall designate one member who is first appointed to serve a term of one year, two of the members who are first appointed to serve for terms of two years and two of the members who are first appointed to serve for terms of three years. Thereafter, members shall serve for terms of three years. At its first meeting, and annually thereafter, the Commission shall elect a chair from among its members for a term of one year.

(e) **Resignation by Operation of Law/Removal of Commissioners.** Any member whom the Commission certifies to have missed three regularly scheduled meetings of the Commission in any 12-month period without prior authorization of the Commission shall be deemed to have resigned from the Commission effective on the date of the written certification from the Commission.

(f) **Compensation.** Members shall receive \$25 for each meeting of the Commission actually attended; provided, however, that no member shall be paid for attending more than three Commission meetings in any one calendar month. (Added by Ord. 293-96, App. 7/17/96; amended by Ord. 58-00, File No. 000198, App. 4/7/2000)

SEC. 11.88. COMMISSION POWERS AND DUTIES.

The Commission's powers and duties shall include:

(a) Advising the Director of the Department of Telecommunications and Information Services in all matters related to the discharge of his or her duties; including, but not limited to, advice regarding the regulation of rates for the basic

cable television service tier, customer service by cable television operators, and the use and operation of the cable television public, educational or governmental access channels.

(b) In addition to the functions prescribed in (a) above, the Commission shall evaluate City policies and procedures affecting the provision of telecommunications services and the installation of telecommunications facilities within the City and Develop a City Telecommunications Plan. The Telecommunications Plan should propose City policies and procedures to guide the installation of telecommunications facilities in the City. These policies should facilitate the deployment of new technologies within the City, maximize the availability of telecommunications services to City residents, businesses and departments, preserve City property and resources, and protect the health, safety and welfare of City residents. The Telecommunications Plan should be developed with maximum public participation including residents, independent experts, Telecommunications Providers and City departments. The Plan shall be submitted to the Mayor and the Board for adoption as the City's Telecommunications Plan. It shall be updated, after public participation and hearings, and if necessary, amended, every 24 months. (Added by Ord. 293-96, App. 7/17/96; amended by Ord. 58-00, File No. 000198, App. 4/7/2000; Ord. 203-04, File No. 040752, App. 8/5/2004)

SEC. 11.89. COMMISSION MEETINGS.

The Commission shall meet from time to time at the request of the Department, except that for purposes of review and adoption of the Telecommunication Plan described in (b) above, the Commission shall meet no sooner than six months before the Plan is to be adopted, and shall meet as necessary thereafter, for purposes of updating and amending the plan, until the plan is adopted. (Added by Ord. 293-96, App. 7/17/96; amended by Ord. 58-00, File No. 000198, App. 4/7/2000; Ord. 203-04, File No. 040752, App. 8/5/2004)

San Francisco - Administrative Code

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CHAPTER 12: HOUSING AUTHORITY

- Sec. 12.1. Findings of Board of Supervisors.
- Sec. 12.2. Appointment of Commissioners of Housing Authority.

SEC. 12.1. FINDINGS OF BOARD OF SUPERVISORS.

The Board of Supervisors of the City and County does hereby find and declare that.

- (a) There is need of the housing authority in the City and County;
- (b) Insanitary and unsafe inhabited dwelling accommodations exist within the City and County; and
- (c) There is a shortage of safe and sanitary dwelling accommodations in the City and County available to persons of low income at rentals which they can afford.

In finding and determining the aforesaid facts and things, the Board of Supervisors has taken into consideration the degree of overcrowding, the percentage of land coverage, the light, air, space and access available to the inhabitants of such dwelling accommodations, the size and arrangement of the rooms, the sanitary facilities and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes. (Res. No. 3874 (C.S.))

SEC. 12.2. APPOINTMENT OF COMMISSIONERS OF HOUSING AUTHORITY.

The Board of Supervisors, through the Clerk, shall notify the Mayor of the adoption of this Resolution (Chapter) and request the Mayor to appoint five persons as commissioners of the Housing Authority of the City and County. Such persons shall be appointed and shall serve in accordance with the provisions of Sections 34270 to 34280 of the State Health and Safety Code. (Res. No. 3874 (C.S.))

San Francisco - Administrative Code

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CHAPTER 12A: HUMAN RIGHTS COMMISSION

- Sec. 12A.1. Findings.
- Sec. 12A.2. Declaration of Policy.
- Sec. 12A.3. Scope of Ordinance.
- Sec. 12A.4. Establishment; Appointment; Terms; Executive Secretary.
- Sec. 12A.5. Powers and Duties.
- Sec. 12A.6. Advisory Council; Special Committees.
- Sec. 12A.7. Cooperation With Other Communities.
- Sec. 12A.8. Unfair Neighborhood Practices.
- Sec. 12A.9. Adjustment and Settlement of Complaints.
- Sec. 12A.10. Rules and Regulations.
- Sec. 12A.11. Reports.
- Sec. 12A.12. Data.
- Sec. 12A.13. Individual Remedies.
- Sec. 12A.14. Repeal.
- Sec. 12A.15. Severability.
- Sec. 12A.16. Meetings Public.
- Sec. 12A.17. Domestic Partner Inquiry Requirement for City Forms.

SEC. 12A.1. FINDINGS.

The population of this City and County is composed of people of various racial, religious and ethnic groups. In this City and County the practice of discrimination on the actual or perceived grounds of race, religion, color, ancestry, age, sex, sexual orientation, gender identity, disability, weight, height or place of birth and the exploitation of prejudice related thereto adversely affects members of minority groups.

Such discriminatory practices are inimical to the public welfare and good order in that they: (a) impede social and economic progress for the entire citizenry by preventing members of minority groups from achieving full development of their individual potentialities and from contributing fully to the cultural and business life of the community; (b) constantly frustrate, degrade and

embitter members of minority groups, thereby diminishing their initiative and interests in the community; and (c) tend to create intergroup hostilities and antisocial behavior.

The products of discrimination accumulate continuously, with the result that the social, economic and educational gaps between those suffering discrimination and the majority of the community constantly widen. As a result, mere prohibition of future and present discrimination, while essential, will not reduce the inequalities and disadvantages which a history of discrimination has produced. Accordingly, affirmative remedial action must be initiated, encouraged and coordinated.

Experiences of other urban centers throughout the nation have proved the need for and effectiveness of commissions empowered to study community race relations problems, to work with interested citizens to develop programs to ameliorate tensions and reduce cultural, social and economic disadvantages and to encourage and coordinate implementation of such programs consistent with the needs and rights of members of both the majority and the minority.

A substantial number of the aforementioned evils in this City and County are beyond the regulation of applicable State law, and insofar as State law is applicable, voluntary compliance therewith should be fostered by a local human relations commission. (Amended by Ord. 75-77, App. 3/4/77; Ord. 433-94, App. 12/30/94; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12A.2. DECLARATION OF POLICY.

It is hereby declared:

That the policy of the City and County of San Francisco is to act to give effect to the rights of every inhabitant of the City and County to equal economic, political and educational opportunity,

to equal accommodations in all business establishments in the City and County and to equal service and protection by public agencies;

That an instrumentality should be established to give effect to such rights, to eliminate prejudice and discrimination because of race, religion, color, ancestry, age, sex, sexual orientation, gender identity, disability, or place of birth, to inform the inhabitants of the City and County of developments in human relations, to provide expert advice and assistance to the officers, agencies, boards, departments and employees of the City and County in undertaking ameliorative practices to keep peace and good order and to officially encourage private persons and groups to promote and provide equal opportunity for and good will toward all people. (Amended by Ord. 75-77, App. 3/4/77; Ord. 433-94, App. 12/30/94)

SEC. 12A.3. SCOPE OF ORDINANCE.

This ordinance applies to all discriminatory practices and to resulting intergroup tensions specifically covered by the provisions of this ordinance that occur within the territorial limits of or within any agency under the jurisdiction of the City and County of San Francisco and to the extent permitted by law, to activities outside this City and County which reasonably affect such practices and tensions within said territorial limits. Nothing in this ordinance, however, shall be interpreted or applied so as to create any power or duty in conflict with the preemptive effect of any federal or State law.

(a) As used in this Chapter, the term:

"Age" refers to and shall include any person who has attained the age of 40 years and has not attained the age of 65 years.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the choice of human adult sexual partner according to gender.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Disability" is a physical or mental impairment which substantially limits one or more

major life activities, is regarded as having such an impairment, or has a record of such an impairment.

"Qualified Disabled Employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94)

SEC. 12A.4. ESTABLISHMENT; APPOINTMENT; TERMS; EXECUTIVE SECRETARY.

(a) There is hereby established a commission to be known as the Human Rights Commission of the City and County of San Francisco (hereinafter called "Commission"), consisting of 15 members broadly representative of the general public and the employer, labor, religious, racial, age, sex, sexual orientation, gender identity, disabled and ethnic groups in the City and County, to be appointed by the Mayor. Four of the members who are first appointed shall be designated to serve for terms of one year, four for two years, four for three years and three for four years from the date of their appointments. Thereafter, members shall be appointed as aforesaid for a term of office of four years, except that all of the vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until his or her successor has been appointed and has qualified. The Commission shall elect a chair from among its members. The term of office as chair of the Commission shall be for the calendar year or for that portion thereof remaining after each such chair is designated or elected. The compensation of members of said Commission shall be \$25 for each meeting of the Commission actually attended by said members; provided, however, that no member shall be paid for attending more than four Commission meetings in any one calendar month.

(b) The position of Executive Secretary to the Commission shall be established pursuant to and subject to Sections 3.500 and 8.200 of the Charter of the City and County of San Francisco. The person occupying such position shall be appointed by the chair of the Commission with the approval of a majority of the members of the

Commission. The position of Executive Secretary to the Commission shall be exempted from the residency and electoral requirements of Section 16.98 of the San Francisco Administrative Code. All staff personnel shall be under the immediate direction and supervision of the Executive Secretary. (Amended by Ord. 503-83 App. 10/14/83; Ord. 271-89, App. 7/28/89; Ord. 433-94, App. 12/30/94)

SEC. 12A.5. POWERS AND DUTIES.

In addition to the other powers and duties set forth in this ordinance, the Commission shall have the power and duty to:

(a) Study, investigate, mediate and hold public hearings on community-wide problems arising in this City and County which may result in intergroup tensions or discrimination because of actual or perceived race, religion, color, ancestry, age, sex, sexual orientation, gender identity, physical disability, weight, height or place of birth. In the performance of its duties under this subsection, the Commission, as permitted by law, may require by subpoena ad testificandum setting forth the specific nature of its inquiry, the attendance and testimony under oath of any person directly involved in or concerned with discrimination within the scope of this ordinance whose presence and testimony is reasonably necessary to its inquiry; provided, however, that any such inquiry involving any agency, board, or officer of the City and County shall be governed by the provisions of Subsection (f) hereof. In case of the refusal of any person to attend or testify as required by a subpoena ad testificandum issued by the Commission, the Commission may proceed to petition for a court order pursuant to Section 1991 of the California Code of Civil Procedure.

(b) Prepare and disseminate educational and informational material relating to prejudice and discrimination and ways and means of eliminating such prejudice and discrimination.

(c) Furnish cooperation, information, guidance and technical assistance to other public agencies and private persons, organizations and

institutions engaged in activities and programs intended to eliminate prejudice and discrimination.

(d) Consult with and maintain contact with other public agencies and with representatives of employers, labor unions, property owners associations, realtor associations, religious denominations and institutions, professional associations, national origin groups, community organizations concerned with interracial, interreligious and intercultural understanding, social welfare organizations and such other private organizations and institutions as the Commission shall deem advisable to further the objectives of this ordinance.

(e) Cooperate with and make written recommendations to City and County agencies, boards and officers, as well as the agencies, boards or officers operating under State law within the City and County of San Francisco, towards the development and implementation of programs and practices for the purpose of furthering the objectives of this ordinance. The Commission and the affected agency, board or officer shall submit reports of progress in establishing and implementing such programs and practices as are from time to time requested by the Mayor through the chair of the Commission.

(f) Subject to the approval of the Mayor, request of any City and County agency, board or office information, services, facilities and any other assistance for the purpose of furthering the objectives of this ordinance. All such requests shall be promptly complied with by the affected agency, board or officer.

(g) Investigate and, with the assent of the parties, mediate all incidents of discrimination within the scope of this ordinance to the extent such functions are not within the exclusive responsibilities of the California Fair Employment Practices Commission or any federal or other State agency, and make specific and detailed recommendations to the interested parties as to the method of eliminating such discrimination. The Commission shall also be authorized to investigate complaints of discrimination brought by citizens involving agencies, boards or officers

operating under State law within the City and County of San Francisco, and, where appropriate, to make written recommendations to said agencies or to represent citizens before said agencies.

(h) Prepare, encourage and coordinate programs of voluntary affirmative action to reduce or eliminate existing inequalities and disadvantages in the City and County resulting from past discriminatory practices. (Amended by Ord. 599-82, App. 12/24/82; Ord. 433-94, App. 12/30/94; Ord. 278-96, App. 7/3/96; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12A.6. ADVISORY COUNCIL; SPECIAL COMMITTEES.

(a) There shall be established a council to be known as the Advisory Council on Human Rights (hereinafter called "Council"), representative of the following interests or groups: Employer, labor, racial, religious, ethnic, housing, appropriate governmental agencies, and such other as the Mayor shall deem advisable. The members of the Council shall be appointed by the Mayor to serve at his or her pleasure and shall not be subject to the residence requirements of the Charter. The Council shall advise the Commission and shall be authorized to mediate and conciliate, upon specific request by the Commission, and to perform such other functions as shall from time to time be deemed appropriate by the Commission.

Members of the council shall serve without compensation.

(b) The Commission may form such special committees within and without the Advisory Council as are necessary to assist the Commission in the solution of specific problems within the scope of its responsibilities. The members of such committees shall be appointed by the Mayor upon the recommendation of the Commission, and shall serve until released by the Mayor upon the recommendation of the Commission and shall be residents of the City and County of San Francisco.

Members of special committees shall serve without compensation.

(c) There shall be established a special committee of no fewer than three persons who are publicly identified with the lesbian/gay community or who have worked closely with such community. The members of the committee shall be appointed by the Commission and shall serve until released by the Commission. Members shall be residents of the City and County of San Francisco.

The committee shall address itself specifically to the identification and solution of problems associated with the lesbian/gay community, and shall file written reports thereon with the Commission.

Members of the committee shall serve without compensation and all meetings of the committee shall be public.

(d) The Board of Supervisors declares that individuals appointed to the Advisory Council on Human Rights and Special Committees created pursuant to this Section, and other advisory committees created to advise the Commission, are intended to represent and further the interests of Minority Business Enterprises, Woman Business Enterprises and Local Business Enterprises, and that such representation and furtherance will ultimately serve the public interest. Accordingly, the Board of Supervisors finds that for the purposes of persons who hold such office, the owners, officers, and employees of Minority Business Enterprises, Women Business Enterprises and Local Business Enterprises are tantamount to and constitute the public generally within the meaning of Section 87103 of the California Government Code. (Amended by Ord. 540-82, App. 11/12/82; Ord. 180-91, App. 5/15/91)

SEC. 12A.7. COOPERATION WITH OTHER COMMUNITIES.

The Commission shall consult with and maintain contact with the human relations officers and other appropriate officers of other communities in the Bay Area and shall cooperate in the development and implementation of intercommunity human relations programs to further the

objectives of this ordinance. The Commission shall encourage the Association of Bay Area Governments to develop and implement similar programs. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.8. UNFAIR NEIGHBORHOOD PRACTICES.

(a) It shall be an unfair practice for any person, firm, partnership, association or corporation engaged in the business of real estate development, purchase, sale and/or brokerage to commit intentionally any one or more of the following acts in the course of such business:

(1) Induce directly or indirectly or attempt to induce directly or indirectly the sale or listing for sale of real property by representing that a change has occurred or will or may occur with respect to the racial, religious or ethnic composition of the block, neighborhood or area in which said property is located.

(2) Induce directly or indirectly or attempt to induce directly or indirectly the sale or listing for sale of real property by representing that the residence or anticipated residence of any particular race, religious or ethnic group in the area will or may result in: (i) the lowering of property values; (ii) a change in the racial, religious or ethnic composition of the block, neighborhood or area in which the property is located; (iii) an increase in criminal or antisocial behavior in the area; and (iv) a decline of the quality of the schools serving the area.

(3) Make any representation to any prospective purchaser that any block, neighborhood or area has undergone or will or might undergo a change with respect to the religious, racial or ethnic composition of the block, neighborhood or area for the purpose of discouraging the purchase of property in a particular area.

(b) Nothing in this ordinance shall be construed to discourage any person, firm, partnership, association or corporation from engaging in legitimate business practices related to the purchase from or sale to persons of any actual or perceived race, religion, color, ancestry, age, sex, sexual orientation, physical disability, weight, height or place of birth, of real property in any

neighborhood of this City and County, nor shall anything in this ordinance be construed as discouraging any person or family of whatever race, religion, color, ancestry, age, sex, sexual orientation, physical disability, weight, height or place of birth from seeking real property in any neighborhood of this City and County. (Amended by Ord. 410-74, App. 8/28/74; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12A.9. ADJUSTMENT AND SETTLEMENT OF COMPLAINTS.

(a) Upon the filing with the Commission of a verified written complaint by any person specifying in detail that an unfair practice, as defined in Section 12A.8 hereof, has occurred, the chair of the Commission, pursuant to regulations duly adopted by the Commission, shall designate one of the commissioners to make, with the assistance of the Commission's staff, a full and prompt investigation in connection therewith. If, upon such investigation, it is found that the person charged in the complaint has not engaged in or is not engaging in such unlawful practice, such finding, in writing, shall be filed with the Commission and the complaint shall be dismissed. If, upon such investigation, it is found that probable cause exists for the allegations made in the complaint, the chair of the Commission, pursuant to regulations duly adopted by the Commission, shall direct appropriate personnel to endeavor to eliminate the unfair practice charged in the complaint by means of conciliation and persuasion.

(b) In case of failure to eliminate the unfair practice by the means provided in Subsection (a) of this Section, the Commission shall review the matter and shall, by conciliation and mediation, endeavor to eliminate the unfair practice. The Commissioner who shall have previously made the investigation provided for in Subsection (a) of this Section shall not participate in any of the proceedings hereunder except as a witness and the aforesaid endeavors at conciliation shall not be received in evidence. In furtherance of such conciliation and mediation, the Commission may make specific recommendations to the parties

involved, but such recommendations shall not constitute a decision, finding of fact, judgment or order of the Commission, or be binding upon or be admissible in any court in any subsequent proceeding brought under Subsection (f) of this Section.

In the performance of its duties under the provisions of this subsection, the Commission may require, by subpoena setting forth the specific nature of its inquiry, the attendance of any person and/or the production of any papers, documents or records under his or her control which are relevant and reasonably necessary to its activities. In case of the refusal of any person to attend or testify or produce any papers, documents or records required by a subpoena issued by the Commission, the Commission may proceed to petition for a court order pursuant to Section 1991 of the Code of Civil Procedure. All proceedings under this subsection shall be public.

(c) All evidence and information given to or obtained by the Commission in any proceedings under the provisions of Subsection (a) of this Section shall be confidential, and except as provided in Subsection (a) of Section 12A.11 of this ordinance no such evidence or information shall be divulged or revealed to any person other than parties to the proceedings, members of the Commission and its staff, and the City Attorney, or used against any person at any time by any member or employee of the Commission. Violation of this subsection shall constitute official misconduct and shall constitute cause for removal or discharge pursuant to Section 8.341 of the Charter of the City and County of San Francisco.

(d) The voluntary giving or furnishing of any information or evidence to the Commission in any proceedings under the provisions of this Section shall not constitute a waiver of any legal or constitutional privileges or defenses.

(e) If the party committing the unfair practice complies with the recommendations of the Commission, the matter shall be deemed settled and terminated and no other proceedings shall be had or taken.

(f) If the Commission is unable to eliminate the unfair practice, it may certify the matter to the City Attorney for appropriate legal action to eliminate such unfair practice. The Commission shall, at the time of certifying said matter, transmit to the City Attorney a copy of its findings and recommendations in such case. The City Attorney shall proceed in the name of the City and County no less than 20 and no more than 40 days after certification, to secure from an appropriate court an order enjoining the defendant from continuing or repeating such practice. If the Commission, prior to the commencement of the court proceedings, as a result of its effort of adjustment or otherwise, finds that the potential defendant is no longer engaging in the unfair practice described in its findings and has complied with the recommendations of the Commission, no such proceeding shall be instituted.

(g) In any court proceedings instituted by the City Attorney hereunder, the court shall hear and consider the matter as if it had never been before the Commission. There shall be no presumptions in favor of any prior action of the Commission, nor shall there be any presumption against a defendant arising out of said defendant's refusal to comply with any recommendation of the Commission. In such cases, the burden of proof shall be upon the City and County to establish by competent and substantial evidence that the defendant has violated this ordinance. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.10. RULES AND REGULATIONS.

The Commission shall issue such rules and regulations for the conduct of its business as are necessary to carry out the purpose of this ordinance. Those portions of such rules and regulations which govern public hearings by the Commission shall conform as nearly as practicable to pertinent sections of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1, Division 3, Title 2, of California Government Code. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.11. REPORTS.

The Commission shall render a written report of its activities to the Mayor and to the Board of Supervisors not less than once every three months. Such reports shall include:

(a) Case histories of conciliation settlements made under this ordinance, the disclosure of which, in the judgment of the Commission, will further the objectives of this ordinance, but such reports of case histories shall not include names or other facts which might clearly identify the parties involved, without the prior consent of the parties first obtained.

(b) Recommendations to the Mayor and the Board of Supervisors for the development of policies and procedures which will further the objectives of this ordinance.

(c) Recommendations to the Mayor and the Board of Supervisors for additional legislation deemed by the Commission to be necessary to carry out the purposes of this ordinance.

(d) Instances of discrimination by any agency, board or officer of this City and County which the Commission determines to have occurred subsequent to the issuance of its prior report.

(e) Recommendations of actions to be taken by any agency, board or officer of this City and County for the purposes of furthering the objectives of this ordinance. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.12. DATA.

The Commission shall maintain and, subject to the limitations of Section 12A.9(c) of this ordinance, shall serve as the source of accurate and reliable data on practices, activities and other problems which are the subject of this ordinance. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.13. INDIVIDUAL REMEDIES.

Nothing in this ordinance or the provisions thereof shall be construed as granting to an aggrieved individual any right to pursue a civil action against any person, firm, partnership, association, corporation or any agency, board or officer of this City and County. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.14. REPEAL.

Any ordinance or part of any ordinance conflicting with the provisions of this ordinance hereby is repealed to the extent of such conflict. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.15. SEVERABILITY.

If any part or provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this ordinance are severable. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.16. MEETINGS PUBLIC.

All meetings of the Commission shall be public. (Added by Ord. 209-64, App. 7/24/64)

SEC. 12A.17. DOMESTIC PARTNER INQUIRY REQUIREMENT FOR CITY FORMS.

(a) It is the official policy of the City and County of San Francisco that to the extent consistent with preemptive state and federal law, the City shall not discriminate in any of its programs, activities or services between members of the public with spouses and those with domestic partners. Nor shall the City discriminate between members of the public who are domestic partners and those who are spouses. This ordinance is intended to require all City departments to take steps to ensure that they are not discriminating in violation of the City's policy.

(b) Whenever a City board, commission, department, officer or agency issues a form that requires or requests information regarding or related to marital status, that form shall also include a separate inquiry field similarly requiring or requesting information regarding or related to domestic partner status.

(c) Every department preparing a form subject to this section shall inform the Human Rights Commission of their plan to implement

the ordinance within six months of the effective date of the ordinance and shall allow the Human Rights Commission Director to audit, when necessary, the forms and to dictate changes solely for the purpose of ensuring consistency with the purpose of this ordinance.

(d) This ordinance is not intended to require any City department, agency or official to change a form where the change would conflict with preemptive State or federal laws. (Added by Ord. 189-99, File No. 990744, App. 7/1/99)

CHAPTER 12B: NONDISCRIMINATION IN CONTRACTS

- Sec. 12B.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions; Definitions.
- Sec. 12B.2. Nondiscrimination Provisions.
- Sec. 12B.3. Human Rights Commission Empowered.
- Sec. 12B.4. Nondiscrimination Guidelines.
- Sec. 12B.5. Chapter Applies Only to Discriminatory Employment Practices.
- Sec. 12B.5-1. Nonapplicability, Exceptions and Waivers.
- Sec. 12B.6. Severability.

SEC. 12B.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS; DEFINITIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts hereinafter executed or amended in any manner or as to any portion thereof, a provision obligating the contractor not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any employee of, any City employee working with, or applicant for employment with such contractor and shall require such contractor to include a similar provision in all subcontracts executed or amended thereunder.

(b) No contracting agency of the City, or any department thereof, acting for or on behalf of the City and County, shall execute or amend any

contract or property contract with any contractor that discriminates in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent.

(c) Definitions. As used in this Chapter the following words and phrases shall have the meanings indicated herein:

"Age" shall mean the age of any employee or applicant for employment who has attained the age of 40 years and has not attained the age of 65 years. For the purposes of this Chapter, discrimination because of age shall mean dismissal from employment of, or refusal to employ or rehire any person because of his or her age, if such

person has attained the age of 40 years and has not attained the age of 65 years, if the person is physically able and mentally competent to perform the services required. Age limitations of apprenticeship programs in which the State or its political subdivisions participate shall not be considered discriminatory within the meaning of this Chapter.

"Amend" shall mean to substantively change the terms of a pre-existing contract, and shall not include amendments to decrease the scope of work or the amount to be paid under a contract. Construction change orders shall not be construed as contract amendments for the purposes of this Chapter.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into after June 1, 1997 pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" shall mean a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contrac-

tor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract.

(d) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to a contract or property contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12B.2. NONDISCRIMINATION PROVISIONS.

Every contract and property contract for or on behalf of the City shall incorporate by reference and require the contractor to comply with the provisions of Section 12B.2. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements set forth in Sections 12B.2(a) and 12B.2(c) through 12B.2(k), and failure to do so shall constitute a material breach of contract.

In the performance of a contract the contractor agrees as follows:

(a) The contractor or subcontractor will not discriminate against any employee, City and County employee working with such contractor or subcontractor, or applicant for employment with such contractor or subcontractor on the basis of the fact or perception of that person's race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, AIDS/HIV status, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The contractor or subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Nothing in this Chapter shall require or prohibit the establishment of new classifications of employees in any given craft. The provisions of this Section with respect to age shall not apply to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which has the effect of a minimum service requirement, and (3) operation of the terms or conditions of any bona fide group or insurance plan. The contractor or subcontractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in such form and content as shall be furnished or approved by the awarding authority setting forth the provisions of this Section.

(b) The prime contractor shall state that the prime contractor does not, and will not during the term of the contract discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits as well as any benefits other than bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to State or local law authorizing such registration, subject to the following conditions. In the event that the contractor's actual cost of providing a certain benefit for the domestic partner of an employee exceeds that of providing it for the spouse of an employee, or the contractor's actual cost of providing a certain benefit for the spouse of an employee exceeds that of providing it for the domestic partner of an employee, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor shall not be deemed to discriminate in the provision of benefits if the contractor provides the employee with a cash equivalent. The Director shall be the final arbiter of a contractor's or property contractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission. Contractors shall treat as confidential to the maximum extent allowed by law or the requirements of contractor's insurance provider any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

In adopting this Section 12B.2(b), the intent of the Board of Supervisors is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

In particular, consistent with the severability clause set forth in Section 12B.6 below, the Board of Supervisors intends that if a court or agency of competent jurisdiction finds that a State or federal law, rule or regulation invalidates (1) the application of this Section to any business, person, type of compensation or benefit, or location; or (2) any other requirement of this Section, then the court or agency should sever the invalid clause and leave in effect the remainder of this Section.

(c) The contractor or subcontractor shall provide reasonable accommodation for qualified disabled applicants for employment and for qualified disabled employees. Said contractor or subcontractor need not provide reasonable accommodation if such would present an undue hardship. An undue hardship may include but not be limited to more than a de minimus cost, violation of the seniority rights of other co-workers as established by a bona fide seniority system, or a health or safety risk to the employee or co-employees. The burden of establishing an undue hardship rests on the employer.

(d) The contractor or subcontractor will in all solicitations or advertisements for employees placed by or on his or her behalf, state that qualified applicants will receive consideration for employment without regard to the fact or perception of their race, creed, religion, color, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or AIDS/HIV status.

(e) The contractor or subcontractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other agreement or understanding, a notice, in such form and content as shall be furnished or approved by the awarding authority, advising the said labor union or workers'

representative of the contractor's or subcontractor's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(f) The contractor or subcontractor will permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the Commission, the City's awarding authority or the Fair Employment and Housing Commission, for the purposes of investigation to ascertain compliance with the nondiscrimination provisions of this Chapter, and upon request shall provide evidence that the contractor has complied or will comply with the nondiscrimination provisions of this Chapter.

(g) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that the contractor or subcontractor has wilfully violated such nondiscrimination provisions; or

(2) A finding by the California Fair Employment and Housing Commission that a contractor or subcontractor has violated any provision of the California Fair Employment and Housing Act or the nondiscrimination provisions of this Chapter, provided that the California Fair Employment and Housing Commission has issued a final order pursuant to Section 12970 of the Government Code, or has obtained a judgment and order enforcing the final order pursuant to Section 12973 of the Government Code; provided further, that for the purposes of these provisions, an order or injunction shall not be considered final during the period within which (1) appeal may be taken, or (2) the same has been stayed by order of court, or (3) further proceedings for vacation, reversal or modification are in progress before a competent administrative or judicial tribunal.

(3) Upon such finding by the Director or other official designated by the Commission, or the California Fair Employment and Housing

Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission, within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Subparagraphs (h) and (i) hereof.

(4) The Commission shall, within 10 days of the date of issuance of any finding by the Director or other official designated by the Commission for the enforcement of this Chapter, mail to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(5) For purpose of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12B.2(g)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(6) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding, and requiring him or her to bring such books, records, documents or other things under his or her control.

(7) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to

public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(8) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(9) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(h) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12B.2(g) that the contractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City.

(i) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be material breach of contract and the basis for determination by the awarding author-

ity that the contractor or subcontractor is an irresponsible bidder as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(j) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(k) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be an irresponsible bidder under Section 12B.2(i) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report, which may be a copy of the federal EEO-1, or a more detailed report as determined by the Commission. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(3) Personally, or through its representatives, the contractor or subcontractor shall, through negotiations with the unions with whom it has collective bargaining or other agreements requiring the contractor or subcontractor to obtain or clear its employees through the union, or when the contractor or subcontractor otherwise uses a union as an employment resource, attempt to develop an agreement which will:

(A) Define and outline responsibilities for nondiscrimination in hiring, referral, upgrading and training;

(B) Otherwise implement a nondiscrimination program in terms of the unions' specific areas of skill and geography, such as an apprenticeship program, to the end that minority workers will be available and given an equal opportunity for employment.

(4) The contractor or subcontractor shall notify the awarding authority of opposition to the nondiscrimination provisions of a contract by individuals, firms or organizations during the term of the contract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 84-87, App. 3/20/87; Ord. 433-94, App. 12/30/94; Ord. 215-96, App. 5/30/96; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12B.3. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12B.2 hereof. (Added by Ord. 261-66, App. 10/21/66)

SEC. 12B.4. NONDISCRIMINATION GUIDELINES.

The following nondiscrimination guidelines shall apply to all contracts and property contracts subject to this Chapter.

In order to be eligible to submit a bid or proposal or to have a bid or proposal considered by the awarding authority, the prospective contractor shall agree to abide by a nondiscrimination program which conforms to the requirements of the Commission.

The Commission may also require contractors and subcontractors to take part in a pre-bid or pre-award conference in order to develop, improve or implement a qualifying nondiscrimination program.

(a) Nondiscrimination programs developed pursuant to this Section shall be effective for a period of 12 months from the date of approval by the Commission. Contractors or subcontractors

who are members in good standing of a trade association which has negotiated a nondiscrimination program with the Commission may make this association program their commitment for the specific contract or property contract upon approval of the Commission without the process of a separate pre-bid or pre-award conference. Such an association agreement shall be effective for a period of 12 months from the date of approval by the Commission. Trade associations shall provide the Commission with a list of members in good standing in such association. The Commission shall annually supply contracting agencies of the City and County with a list of contractors and subcontractors who have developed approved nondiscrimination programs.

(b) The awarding authority shall be responsible for notifying all prospective bidders or proposers of the requirements of this Section and, when requested by the Commission, for notifying the Commission of each contract or property contract which is being proposed to be put to public bid.

(c) The proposed nondiscrimination program described by this Section, and the pre-bid or pre-award conference which may be required by the Commission, shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

(1) Apprenticeship where approved programs are functioning, and other on-the-job training for nonapprenticeable occupations;

(2) Classroom preparation for the job when not apprenticeable;

(3) Pre-apprenticeship education and preparation;

(4) Upgrading training and opportunities;

(5) Encouraging the use of contractors and subcontractors of all ethnic groups, provided, however, that any contract or property contract subject to this Chapter shall require the contractor or subcontractor to provide not less than the prevailing wage, working conditions, and practices generally observed in private industries in the City for such work; and

(6) The entry of qualified minority journeypersons into the industry.

(d) Nondiscrimination agreements resulting from the proposed nondiscrimination programs or the pre-bid or pre-award conferences shall not be confidential and may be publicized by the Commission at its discretion. In addition, the Commission may report to the Board of Supervisors, either on request of the Board or on its own initiative, on the progress or the problems which attend the implementation of these agreements or any other aspect of enforcement of this Chapter.

(e) Any job training or education program using the funds, facilities, or staff of the City which, in the judgment of the Board of Supervisors or the Commission, can make a contribution to the implementation of this Chapter shall submit reports to the Commission as requested and shall be required to cooperate with the contractors, subcontractors and unions and with the Commission for the effectuation of the non-discrimination programs developed under this Chapter. (Amended by Ord. 498-75, App. 1/5/75; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97)

SEC. 12B.5. CHAPTER APPLIES ONLY TO DISCRIMINATORY EMPLOYMENT PRACTICES.

(a) This Chapter shall not confer upon the City and County of San Francisco or any agency, board or commission thereof any power not otherwise provided by law to determine the legality of any existing collective bargaining agreement and shall have application only to discriminatory employment practices by contractors or subcontractors engaged in the performance of City and County contracts or property contracts.

(b) The Board of Supervisors shall appropriate such funds from the General Fund of the City, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for the enforcement of this Chapter. (Amended by Ord. 340-68, App. 12/6/68; Ord. 201-97, App. 5/27/97)

SEC. 12B.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department, board or commission certifies in writing to the Director that pursuant to Administrative Code Sections 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12B.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12B.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12B.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12B.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommenda-

tion of the contracting officer under any or all of the circumstances enumerated in this Section 12B.5-1(d);

(5) Nothing in this Section 12B.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco.

(g) Sections 12B.1(b) and 12B.2(b) shall not apply to any contracts or property contracts executed or amended prior to June 1, 1997, or to

bid packages advertised and made available to the public, or any competitive or sealed bids received by the City, prior to June 1, 1997, unless and until such contracts or property contracts are amended after June 1, 1997, and would otherwise be subject to this Chapter. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 401-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

SEC. 12B.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 261-66, App. 10/21/66; Ord. 286-97, App. 7/18/97)

CHAPTER 12C: NONDISCRIMINATION IN PROPERTY CONTRACTS

- Sec. 12C.1. All Contracts and Property Contracts to Include Nondiscrimination Provisions.
- Sec. 12C.2. Definitions.
- Sec. 12C.3. Nondiscrimination Provisions.
- Sec. 12C.4. Human Rights Commission Empowered.
- Sec. 12C.5. Funding.
- Sec. 12C.5-1. Nonapplicability, Exceptions and Waivers.
- Sec. 12C.6. Severability.

SEC. 12C.1. ALL CONTRACTS AND PROPERTY CONTRACTS TO INCLUDE NONDISCRIMINATION PROVISIONS.

(a) All contracting agencies of the City, or any department thereof, acting for or on behalf of the City and County, shall include in all contracts and property contracts a provision obligating the contractor not to discriminate on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome, HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, operated by that contractor, and shall require such contractor to include a similar provision in all subcontracts.

(b) The requirements of this Chapter shall apply to (i) any of a contractor's operations within San Francisco; (ii) a contractor's operations on real property outside of San Francisco owned by the City or which the City has a right to occupy if the contractor's presence at that location is connected to as contract or property

contract with the City; (iii) where the work is being performed by a contractor for the City within the United States; and (iv) any of a contractor's operations elsewhere within the United States. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12C.2. DEFINITIONS.

As used in this Chapter the term:

"Age" for the purpose of membership refers to the age of any person who has attained the age of 18 years, except for bona fide senior citizen organizations.

"City" shall mean the City and County of San Francisco.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Contract" shall mean an agreement for public works or improvements to be performed, or grants to be provided, or for goods or services to be purchased, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County, and does not include property contracts, agreements entered into pursuant to settlement of legal proceedings, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

"Contractor" means any person or persons, firm, partnership, corporation, or combination thereof, who enters into a contract or property contract with a department head or officer empowered by law to enter into contracts or property contracts on the part of the City and County.

"Director" shall mean the Director of the Human Rights Commission.

"Disability" is a physical or mental impairment which substantially limits one or more major life activities, or a record of such an impairment.

"Domestic partner" shall mean any person who has a currently registered domestic partnership with a governmental body pursuant to State or local law authorizing such registration.

"Gender identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

"Property contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the City for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the City's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Chapter, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property contract" shall not include a revocable at-will use or encroachment permit for the use of or encroachment on City property regardless of the ultimate duration of such permit, except that "property contract" shall include such permits granted to a private entity for the use of City property for the purpose of a for-profit activity. "Property contract" shall also not include street excavation, street construction or street use permits, agreements for the use of City right-of-way where a contracting utility has the power of eminent domain, or agreements governing the use of City property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

"Qualified disabled employee" shall mean a person able to perform the essential functions of a job with reasonable accommodation.

"Sex" shall mean the character of being male or female.

"Sexual orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

"Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a contractor, if such goods or services are procured or used in the fulfillment of the contractor's obligations arising from a contract with the City, (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a property contract to a subcontractor and pursuant to which the contractor remains obligated under the property contract.

"Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a subcontract with a contractor. Such term shall include any person or entity who enters into an agreement with any subcontractor for the performance of 10 percent or more of any subcontract. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 440-96, App. 11/8/96; Ord. 481-96, App. 12/20/96; Ord. 201-97, App. 5/27/97)

SEC. 12C.3. NONDISCRIMINATION PROVISIONS.

Every contract and property contract entered into by any agency of the City shall incorporate by reference and require contractor to comply with the nondiscrimination provisions of Section 12C.3. In addition, all contractors must incorporate by reference in all subcontracts and require subcontractors to comply with the requirements of this Section 12C.3, and failure to do so shall constitute a material breach of contract.

In the performance of a contract, the contractor or subcontractor shall agree as follows:

(a) The contractor or subcontractor will not discriminate against any person seeking accommodations, advantages, facilities, privileges, services, or membership in the business, social or other establishment or organization operated by the contractor or subcontractor on the basis of the fact or perception of that person's race, color, creed, religion, national origin, ancestry, age,

sex, sexual orientation, gender identity, domestic partner status, marital status, disability, AIDS/HIV status, weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Services provided by contractor or subcontractor to the public shall be provided regardless of disability of persons otherwise entitled to or qualified for such services.

(b) Should the contractor or subcontractor operate as a membership organization, the contractor or subcontractor will permit access to its membership records, rules, regulations and other pertinent data, by the City's awarding authority, or the Commission, for the purpose of investigating to ascertain compliance with the nondiscrimination provisions of this Chapter, and on request provide evidence that the contractor or subcontractor has complied or will comply with the nondiscrimination provisions of this Chapter. The Director shall be the final arbiter of a contractor's or subcontractor's compliance or substantial compliance with this Chapter and the Director's determination shall not be appealable to the Commission.

(c) A contractor or subcontractor shall be deemed to have breached the nondiscrimination provisions of this Chapter upon:

(1) A finding by the Director or such other official who may be designated by the Commission, that contractor or subcontractor has willfully violated such nondiscrimination provisions.

(2) Upon such finding by the Director or other official designated by the Commission, the awarding authority shall notify the contractor or subcontractor that unless the contractor or subcontractor demonstrates to the satisfaction of the Director or other official designated by the Commission within such reasonable period as the Commission shall determine, that the violation has been corrected, action will be taken as set forth in Section 12C.3(d) and/or Section 12C.3(g).

(3) The Commission shall, within 10 days of the date of issuance of any findings by the Director or other official designated by the Commission for the enforcement of this Chapter, mail

to any person or persons affected by said finding, a copy of said finding, together with written notice of the right to appeal such finding. Notice of appeal must be filed in writing with the Chairperson of the Commission within 20 days of the date of mailing said copy and notice.

(4) For purposes of appeal proceedings under this Section, a quorum shall consist of eight members of the Commission. The vote of the majority of the full Commission shall be necessary to affirm, reverse or modify such decisions, order or other action rendered hereunder. Should a member of the Commission be designated under Section 12C.3(c)(1) of this Chapter, that Commissioner may not participate in an appeal under this Section except as a witness.

(5) The presiding officer of the Commission shall have the power to administer oaths to witnesses in appeals before the Commission under this Section. In the event that any person shall fail or refuse to appear as a witness in any such proceeding after being requested to do so, and if it shall appear to the Commission that his or her testimony, or books, records, documents or other things under his or her control are material and relevant as evidence in the matter under consideration by the Commission in the proceeding, the presiding officer of the Commission may subpoena such person, requiring his or her presence at the proceeding and requiring him or her to bring such books, records, documents or other things under his or her control.

(6) All appeals to the Commission shall be open to the public. Records and minutes shall be kept of such proceedings and shall be open to public inspection. Upon reaching a decision in any appeal, the Commission shall give written notice thereof to the Director or other official designated by the Commission, and the appellant or appellants. The decision of the Commission shall be final unless within 15 days of the filing and service of written notice thereof appropriate legal proceedings are filed in a court of competent jurisdiction by any party to the contract, property contract or subcontract.

(7) If any contractor or subcontractor shall fail to appear at an appeal proceeding of the Commission after having been given written

notice to appear, such failure to appear shall be grounds for termination of the contract, property contract or subcontract and such contractor or subcontractor shall be deemed to have forfeited all rights, benefits and privileges thereunder.

(8) The Commission shall promulgate rules and regulations for the implementation of the nondiscrimination provisions of this Chapter.

(d) A breach of the nondiscrimination provisions in the performance of a contract, property contract or subcontract shall be deemed by the City to be a material breach of contract and the basis for determination by the awarding authority that the contractor or subcontractor is an irresponsible contractor or subcontractor as to all future contracts or property contracts for which such contractor or subcontractor may submit bids. Such contractor or subcontractor shall not, for a period of up to two years thereafter, or until it shall establish and carry out a program in conformity with the nondiscrimination provisions of this Chapter, be allowed to act as a contractor or subcontractor under any contract or property contract.

(e) Nothing contained in this Chapter shall be construed in any manner so as to prevent the City from pursuing any other remedies that may be available at law, equity or under any contract or property contract.

(f) The contractor or subcontractor will meet the following standards for compliance:

(1) If the contractor or subcontractor has been held to be irresponsible under Section 12C.3(d) hereof, the contractor or subcontractor shall furnish evidence that it has established and is carrying out a program in conformity with the nondiscrimination provisions of this Chapter.

(2) The contractor or subcontractor may be required to file with the Commission a basic compliance report. Wilful false statements made in such reports shall be punishable as provided by law. No contractor or subcontractor shall be held in noncompliance for not filing such a report with the Commission unless it has been specifically required to do so in writing by the Commission.

(g) The awarding authority may deduct from the amount payable to the contractor or subcontractor by the City under any contract or property contract subject to this Chapter, or may impose upon the contractor or subcontractor, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Chapter. In addition to any other penalties provided for the violation of the nondiscrimination provisions of this Chapter or for the failure of any contractor or subcontractor to abide by the rules and regulations of the Commission, the contract, property contract or subcontract may be terminated or suspended, in whole or in part, by the awarding authority upon the basis of a finding as set forth in Section 12C.3(d) that the contractor or subcontractor has discriminated contrary to the provisions of this Chapter, and all moneys due or to become due hereunder may be forfeited to, and retained by, the City. (Amended by Ord. 489-86, App. 12/18/86; Ord. 433-94, App. 12/30/94; Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 255-99, File No. 991146, App. 10/8/99; Ord. 101-00, File No. 000476, App. 5/26/2000)

SEC. 12C.4. HUMAN RIGHTS COMMISSION EMPOWERED.

The San Francisco Human Rights Commission, its presiding officer and its director are hereby granted the power to do all acts and exercise all powers referred to in Section 12C.3 thereof. (Amended by Ord. 84-77, App. 3/11/77)

SEC. 12C.5. FUNDING.

The Board of Supervisors shall appropriate such funds from the General Fund of the City and County of San Francisco, subject to budgetary and fiscal provisions of the Charter, as it may deem necessary for enforcement of this ordinance. (Amended by Ord. 84-77, App. 3/11/77)

SEC. 12C.5-1. NONAPPLICABILITY, EXCEPTIONS AND WAIVERS.

(a) The Director shall waive the requirements of this Chapter under the following circumstances:

(1) Whenever the Director finds, upon the advice of the awarding authority, that there is only one prospective contractor willing to enter

into a property contract with the City for use of City property on the terms and conditions established by the City, or that the needed goods, services, construction services for a public work or improvement, or interest in or right to use real property are available only from a sole source, and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on any contract compliance requirements;

(2) If the contracting department or commission certifies in writing to the Director that pursuant to Administrative Code Section 6.30 or 21.25 the contract or property contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available; provided that such certification must be made prior to the Controller's contract certification;

(3) Where the City Attorney certifies in writing to the Director that the contract involves specialized litigation requirements such that it would be in the best interests of the City to waive the requirements of this Chapter.

(b) This Chapter shall not apply where the prospective contractor is a public entity and the Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed contract or property contract are not available from another source, or that the proposed contract or property contract is necessary to serve a substantial public interest.

(c) This Chapter shall not apply where the contracting officer finds that the requirements of this Chapter will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the contracting officer has made a good faith attempt to change

the terms or conditions of any such grant, subvention or agreement to authorize application of this Chapter.

(d) Upon the request of a potential contractor or upon the contracting officer's own initiative, after taking all reasonable measures to find an entity that complies with the law, the contracting officer may waive any or all of the requirements of this Chapter for any contract, property contract or bid package advertised and made available to the public, or any competitive or sealed bids received by the City as of the date of the enactment of this ordinance under the following circumstances:

(1) Where the contracting officer determines that there are no qualified responsive bidders or prospective contractors who could be certified by the Commission as being in compliance with the requirements of this Chapter and that the contract or property contract is for goods, a service or a project that is essential to the City or City residents; or

(2) Where the contracting officer determines that transactions entered into pursuant to bulk purchasing arrangements through federal, State or regional entities which actually reduce the City's purchasing costs would be in the best interests of the City; or

(3) Where the contracting officer determines that the requirements of this Chapter would result in the City's entering into a contract with an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter;

(4) The waiver authority granted to contracting officers in this Section 12C.5-1(d) shall be subject to the requirements that:

(i) All proposed waivers must be submitted to the Director and the Clerk of the Board of Supervisors. All proposed waivers must set forth the reasons the contracting officer is requesting the waiver, what steps were taken to find an entity that complies with this Chapter and why the waiver does not defeat the intent of this

Chapter, which is to prohibit the City from entering into contracts with entities that discriminate based on the criteria set forth in this Chapter. Such waivers shall be subject to the prior approval of the Director, who shall take action approving or denying a proposed waiver within 30 days of receiving a notification of a proposed waiver from a contracting officer. If after 30 days the Director has taken no action on the proposed waiver, the waiver shall be deemed approved. The Clerk of the Board of Supervisors shall list the notice of the proposed waiver at the rear of the next available Board agenda, and

(ii) Contracting officers report to the Director whenever such a waiver is granted within five days of granting the waiver, and

(iii) For any contract subject to approval by the Board, the contracting officer shall state in the approving resolution whether any waiver under this Section 12C.5-1(d) has been or is proposed to be granted for that contract, and

(iv) The Director shall conduct quarterly comprehensive reviews of the use of the waiver authority by departments and shall make a report to the Board of Supervisors. Contracting officers who have exercised waiver authority under this Section 12C.5-1(d) in the previous quarter must appear before a Board of Supervisors committee and report on their use of such waiver authority. If the Board finds abuse of waiver authority by a department under this Section 12C.5-1(d), either as a result of a report of the Director or upon its own initiative, the Board may by resolution transfer that waiver authority for that department to the Director, to be exercised by the Director upon recommendation of the contracting officer under any or all of the circumstances enumerated in this Section 12C.5-1(d);

(5) Nothing in this Section 12C.5-1(d) shall limit the right of the Board of Supervisors to waive the provisions of this Chapter.

(e) This Chapter shall not apply to (i) the investment of trust moneys or agreements relating to the management of trust assets, (ii) City moneys invested in U.S. government securities

or under pre-existing investment agreements, or (iii) the investment of City moneys where the Treasurer finds that:

(1) No person, entity or financial institution doing business in the City and County which is in compliance with this Chapter is capable of performing the desired transactions(s); or

(2) The City will incur a financial loss which in the opinion of the Treasurer would violate his or her fiduciary duties.

This subparagraph (e) shall be subject to the requirement that City moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Chapter.

(f) The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the contractor is providing wholesale or bulk water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or loading scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission; provided that the purchase of same may not practically be accomplished through the City's standard competitive bidding procedures; and further provided that this exemption shall not apply to contractors or franchisees providing direct, retail services to end users within the City and County of San Francisco. (Added by Ord. 481-96, App. 12/20/96; amended by Ord. 201-97, App. 5/27/97; Ord. 286-97, App. 7/18/97; Ord. 431-97, App. 11/21/97)

SEC. 12C.6. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

In the event that a court or agency of competent jurisdiction holds that the State or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Amended by Ord. 84-77, App. 3/11/77; Ord. 286-97, App. 7/18/97)

San Francisco - Administrative Code

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CHAPTER 12D: MINORITY/WOMEN/LOCAL BUSINESS UTILIZATION

Provisions Effective for Contracts Solicited Prior to November 1, 1998

- Sec. 12D.1. Short Title.
- Sec. 12D.2. General Findings.
- Sec. 12D.2-1. Additional Findings.
- Sec. 12D.2-2. Further Additional Findings Supporting Six-Month Extension of MBE/WBE/LBE Ordinance—III.
- Sec. 12D.2-3. Further Additional Findings Supporting Three-Month Extension of MBE/WBE/LBE Ordinance—III.
- Sec. 12D.2-4. Additional Findings Supporting a Three-Month Extension of MBE/WBE/LBE Ordinance.
- Sec. 12D.2-5. Additional Findings Supporting a Two-Month Extension of MBE/WBE/LBE Ordinance—III.
- Sec. 12D.2-6. Additional Findings Supporting a Two-Month Extension of MBE/WBE/LBE Ordinance.
- Sec. 12D.3. Declaration of Policy.
- Sec. 12D.4. Scope.
- Sec. 12D.5. Definitions.
- Sec. 12D.6. Powers and Duties of the Commission and the Director.
- Sec. 12D.7. Powers and Duties of the Controller.
- Sec. 12D.8. Powers and Duties of the Mayor, Departments or Contract Awarding Authorities.
- Sec. 12D.9. Additional Findings Supporting Race- and Gender-Conscious Bid Preferences and Subcontractor Participation Goals—Public Works/Construction; Subcontracting Program.
- Sec. 12D.10. Additional Findings Supporting Race- and Gender-Conscious Bid Preferences—Purchasing Contracts.
- Sec. 12D.11. Additional Findings Supporting the Race- and Gender-Conscious Bid Preferences—Consultants and Professional Services.
- Sec. 12D.12. Good-Faith Efforts Required for Other Contracts.
- Sec. 12D.13. Exceptions and Waivers.
- Sec. 12D.14. Monitoring and Compliance.
- Sec. 12D.15. Reporting and Review; Extension.
- Sec. 12D.16. Clerk of Board to Transmit Copies of this Chapter; Informing City Employees.
- Sec. 12D.17. Implementing Regulations.
- Sec. 12D.18. Severability.
- Sec. 12D.19. Effective Date.

Editor's Note:

The provisions of Sections 12D.1 through 12D.19 expired on October 31, 1998, but are still in effect for contracts for which a bid or proposal was solicited prior to November 1, 1998. The provisions of Sections 12D.A.1 through 12D.A.22 govern all contracts for which a bid or proposal was solicited on or after November 1, 1998.

Provisions Effective for Contracts Solicited on or After November 1, 1998

- Sec. 12D.A.1. Short Title.
- Sec. 12D.A.2. General Findings.
- Sec. 12D.A.3. Declaration of Policy.
- Sec. 12D.A.4. Scope.
- Sec. 12D.A.5. Definitions.
- Sec. 12D.A.6. Powers and Duties of the Commission and the Director.
- Sec. 12D.A.7. Powers and Duties of the Controller.
- Sec. 12D.A.8. Powers and Duties of the Mayor.
- Sec. 12D.A.9. Powers and Duties of Contract Awarding Authorities.
- Sec. 12D.A.10. Public Works Contracts.

- Sec. 12D.A.11. Purchasing Contracts.
- Sec. 12D.A.12. Architect/Engineering Contracts.
- Sec. 12D.A.13. Consultants and Professional Services Contracts.
- Sec. 12D.A.14. Best Efforts Required for Other Contracts.
- Sec. 12D.A.15. Exceptions and Waivers.
- Sec. 12D.A.16. Monitoring and Compliance.
- Sec. 12D.A.17. Subcontractor Participation Goals; Subcontracting Program.
- Sec. 12D.A.18. Reporting and Review.
- Sec. 12D.A.19. Severability.
- Sec. 12D.A.20. General Welfare Program.
- Sec. 12D.A.21. Operative Date.
- Sec. 12D.A.22. Expiration.

Editor's Note:

The provisions of Sections 12D.1 through 12D.19 expired on October 31, 1998, but are still in effect for contracts for which a bid or proposal was solicited prior to November 1, 1998. The provisions of Sections 12D.A.1 through 12D.A.22 govern all contracts for which a bid or proposal was solicited on or after November 1, 1998.

Editor's Note:

See also the provisions of Chapter 14A. The provisions of Chapter 14A are temporary and therefore limited in duration.

**PROVISIONS EFFECTIVE FOR
CONTRACTS SOLICITED PRIOR
TO NOVEMBER 1, 1998**

SEC. 12D.1. SHORT TITLE.

This ordinance shall be entitled the "Minority/Women/Local Business Utilization Ordinance" and may be cited as the "MBE/WBE/LBE Ordinance—III." (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92)

SEC. 12D.2. GENERAL FINDINGS.

The Board of Supervisors having adopted Ordinance No. 139-84 on April 2, 1984 to address identified discriminatory practices inherent in the City's procurement process which resulted in the virtual exclusion of minority and woman owned businesses as contractors on City prime

contracts and to offset economic disadvantages faced by local businesses that are not shared by nonlocal businesses;

And Ordinance No. 139-84 being remedial in nature will expire June 30, 1989 and thus required the Human Rights Commission to study minority and woman owned business participation in City contracting prior to the expiration of that Ordinance;

And the Human Rights Commission, pursuant to Section 12D.15 of Ordinance No. 139-84 having in June and July of 1988 heard the testimony of 42 witnesses, reviewed the transcript and written submittals of 127 minority, women, local and other business representatives, studied the testimonial and statistical evidence presented by the public, City departments, and the Commission's staff to ascertain whether the objectives of Ordinance No. 139-84 had been met and having submitted its October 23, 1988 report to this Board entitled "Investigation into Minority and Women Business Participation in City Contracting, Comprehensive Edition: Findings, Recommendations and Support Documentation";

And the United States Supreme Court on January 23, 1989 having decided *City of Richmond v. Croson* which addresses the constitutionally acceptable quantum of evidence that enables a municipality to adopt a race-conscious remedial ordinance in public contracting;

And the Budget Analyst at the request of this Board having studied the participation of minority and woman owned businesses in City contracts at the prime contractor level during fiscal year 1987-1988 and compared this business participation to minority and women businesses' share of their relevant respective industries or professions and having submitted his report dated March 8, 1989 and his revised report dated March 17, 1989 to this Board;

And BPA Economics, Inc. at the request of the City Attorney and the Director of the Human Rights Commission having evaluated statistical evidence provided by City departments and the Budget Analyst, conducted a statistical analysis of these data and having submitted its report

entitled "Statistical Support for San Francisco's MBE/WBE/LBE Ordinance," dated May 1, 1989 and his revised report dated May 15, 1989, to this Board;

And this Board, having conducted 10 additional public hearings, taken additional testimony and written submittals, and reviewed the 1983 and 1988 reports of the Human Rights Commission, the 1989 reports of the Budget Analyst, and the 1989 report of BPA Economics, Inc. (all of which shall be incorporated herein by reference) and relying upon this Board's knowledge about the City's compliance with Ordinance No. 139-84, such knowledge having been acquired during the past five years,

This Board hereby makes the following findings:

1. Local businesses that seek to enter into contracts with the City and County of San Francisco continue to labor under a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City (e.g., higher taxes, higher rents, higher wages and benefits for labor, higher insurance rates, etc.). In 1991, this Board concluded that MBEs and WBEs are currently receiving a very small share of City contracts through joint ventures with majority-owned firms, while a number of well-established LBEs have taken advantage of the five-percent LBE bid preference by joint venturing with each other. The Board concludes that the five-percent MBE/WBE bid preference has not proved sufficiently effective in remedying the exclusion of MBEs and WBEs from City contracts through the vehicle of joint ventures. Accordingly, the Board is granting a seven and one-half percent bid preference to joint ventures with MBE or WBE participation between 40 percent and 50.9 percent to provide more incentives for majority firms to joint venture with MBEs and WBEs to provide services to the City.

2. The public interest is served by continuing to encourage business to locate and remain in San Francisco through the provision of a minimal "good-faith" preference to local businesses in the award of City contracts.

3. Policies and programs that enhance the opportunities and entrepreneurial skills of minority owned, woman owned, and local businesses will best serve the public interest because the growth and development of such businesses will have a significant positive impact on the economic health of the City and will serve to reduce racial tension in our community.

4. The testimony of businesses that seek to enter into contracts with the City or are doing business with the City, as presented to this Board and as detailed in the Human Rights Commission's 1988 report, offer clear and persuasive reasons for the Board of Supervisors to take the actions proposed by this Ordinance to remedy: (1) City contracting practices and community conditions that cause the exclusion or reduce the opportunities of minority and woman owned businesses to be awarded City contracts to such an extent that the amount of City contract dollars awarded to them can only be explained by discrimination; and (2) competitive disadvantages local business continue to face in providing goods and services to the City.

5. Outreach and advertising efforts by City departments have served to draw more minority and woman business enterprises into the City's procurement process. The City needs to intensify its outreach and advertising efforts as well as its education/training programs to reach a broader segment of the MBE/WBE community. However, past experience has taught that outreach and advertising efforts alone are not enough to remedy the exclusion of minority and women owned businesses as prime contractors with the City.

6. Ordinance No. 139-84 has provided City departments with uniform standards and criteria in the award of contracts. However, these standards have not been applied consistently City-wide. This inconsistent application of the Ordinance continues to give preference to majority businesses in the prime award process to the detriment of minority and woman business enterprises.

7. The bid preference mechanism has the advantage of affording minority, woman and local business enterprises a competitive "plus"

when bidding or proposing on City contracts. The bid preference mechanism does not exclude any potential contractor. It encourages competition and thereby ensures that the City is contracting with responsible, efficient contractors. Consequently, the bid preference mechanism has assisted minority, woman and local business enterprises to obtain City contracts. The bid preference is allowed to joint ventures where MBEs and WBEs participate at a managerial and entrepreneurial level with nonminority and nonwoman entrepreneurs. Affording the bid preference to joint ventures has encouraged nonMBE/WBEs to enter into joint venture agreements with MBE/WBEs and compete for City contracts. Several joint ventures of minority/woman and majority/male owned firms have won large construction and professional services contracts with the assistance of the bid preference. The evidence in the record before this Board supports the conclusion that the bid preference invites participation by formerly excluded businesses and hence promotes more competition, resulting in more competitive bids submitted to the City.

8. In Ordinance No. 175-89 this Board concluded that set-asides of contracts, where competition for selected contracts is limited to MBE/WBEs or joint ventures with MBE/WBEs, had been authorized by the Director of the Human Rights Commission only on rare occasions over the past five years (1984-1985). Before the adoption of Ordinance No. 175-89, the Director had regarded the contract set-aside mechanism as a measure to be used in last-resort type cases where a department could demonstrate, despite its good-faith efforts and the application of the bid preference, that it had failed substantially to eliminate the exclusion of MBEs and WBEs from City contracting. In 1989, at the time Ordinance No. 175-89 was adopted, this Board concluded that despite the claim by several departments that the contract set-aside mechanism was essential to ensure participation by MBE/WBEs, the City had made steady progress City-wide toward the MBE/WBE goals while only making sparing use of the contract set-aside mechanism. However, in 1991, this Board found that the use of good-faith efforts and the application of the bid

preference did not appear in all cases to be a sufficient remedy for opening the closed environment in which City departments operate or correcting the identified discriminatory practices of the City against MBEs and WBEs. The Board reaffirms its 1991 finding that setting aside contracts limited to competition among MBE/WBEs or joint ventures with MBE/WBEs is a necessary remedy in those limited cases where a department can demonstrate, despite its good-faith efforts and the application of the bid preference, that it has failed substantially to eliminate the exclusion of MBEs and WBEs from City contracting.

9. Without the Ordinance, many small MBE/WBEs would be unable to compete for and win awards of prime City contracts.

10. Some City departments continue to operate under the "old boy network" when awarding contracts. The City's "old boy network" constitutes a closed business system created and implemented by the City for all contracts, including those subject to the competitive bid process. Discrimination against and insensitivity to MBEs and WBEs continue to persist in the City's procurement process. The closed environment in which City businesses operate has excluded MBEs and WBEs and has placed them under a competitive disadvantage when competing for City prime contracts.

11. The statistical evidence before this Board relating to the award of contracts subject to this Ordinance for fiscal year 1987-1988 reflects that in almost all areas of contracting MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars that are disproportionately lower than the available numbers of MBEs and WBEs in San Francisco. These data are gathered and summarized in Appendix X, which contains utilization indices described as Tables 1 through 7, and 10 through 11, and is attached to this Ordinance and incorporated herein by reference as though fully set forth. These utilization indices measure the disparity between MBEs (as a group and each ethnic group identified as a minority) or WBE participation in City prime contracts and their share of

their relevant industry or profession. That disparity is measured in terms of a statistical significance. When measure of the statistical significance is minus two (-2) or less, the Board concludes that the disparity cannot be attributed to chance. Based upon the weight of the testimony and other evidence before this Board and the Commission in 1983, 1984, 1988 and 1989, the Board finds that the statistical disparities can only be attributed to discriminatory procurement practices of the City against MBEs and WBEs.

Based on the testimony and other evidence before this Board and the Commission in 1983, 1984, 1988 and 1989, the Board finds that the aforementioned statistical disparities are also attributed to discrimination in the private sector against MBEs and WBEs that is manifested in and perpetuated and exacerbated by the City's procurement practices.

12. Consistent with Ordinance No. 139-84, on December 19, 1988 the Board of Supervisors adopted legislation which requires the City's Risk Manager to develop uniform insurance requirements for City contracts. On May 2, 1989 the Risk Manager established these uniform standards which are set forth in a document entitled "Contract Insurance Manual." This manual is intended to be a guide for contract administrators to standardize bond and insurance requirements in City contracts.

13. Consistent with Ordinance No. 139-84, the Board of Supervisors has also considered whether to: (1) create a special revolving fund to assist newly established MBEs and WBEs to meet bonding and other fee-related requirements; and (2) relax or waive bonding requirements on certain contracts to facilitate MBE/WBE participation. In view of the City's budgetary constraints and the opposition voiced by segments of the local business community, this Board finds that creation of a special revolving fund, or relaxation or waiver of bonding requirements is not feasible at this time. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92)

SEC. 12D.2-1. ADDITIONAL FINDINGS.

Upon the expiration of Ordinance No. 139-84 this Board having adopted Ordinance No. 175-89 on May 30, 1989 to address the same types of practices and to offset the same types of economic disadvantages identified in Section 12D.2;

And Ordinance No. 175-89 as amended being remedial in nature will expire June 30, 1992 and thus required the Human Rights Commission to study minority and woman owned business participation in City contracting prior to the expiration of Ordinance 175-89;

And the Human Rights Commission, pursuant to Section 12D.15 of Ordinance No. 175-89 having in January and February of 1992 heard the testimony of 68 witnesses, reviewed the transcripts and written submittals of 54 minority, women, local and other business representatives, studied the testimonial and statistical evidence presented by the public, City departments, and the Commission's staff to ascertain whether the objectives of Ordinance No. 175-89 as amended had been met and having submitted to this Board its February 28, 1992, "Sunset Report" and its March 2, 1992 "Progress Report FY 1990-91";

And this Board, having conducted additional public hearings, taken additional testimony and written submittals, and reviewed the Human Rights Commission's February 28, 1992 "Sunset Report" and its March 2, 1992 "Progress Report FY 1990-91" (all of which shall be incorporated by reference);

And this Board incorporating by reference the findings set forth in Section 12D.2 above;

And relying upon this Board's knowledge acquired during the past eight years about the City's compliance with the MBE/WBE/LBE Ordinances and all amendments thereto. This Board hereby finds that the purposes of the MBE/WBE/LBE Ordinances and the amendments thereto have not been fulfilled and that it is necessary to extend Ordinance No. 175-89 as amended for an additional five-year period. (Added by Ord. 155-92, App. 5/29/92)

SEC. 12D.2-2. FURTHER ADDITIONAL FINDINGS SUPPORTING SIX-MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE—III.

Upon the expiration of Ordinance No. 175-89 this Board having adopted Ordinance No. 155-92 to address the practices and to offset the economic disadvantages identified in Sections 12D.2, 12D.9(A), 12D.10(A), 12D.11(A) and 12D.11(A)—(1);

And Ordinance No. 155-92 being remedial in nature will expire June 30, 1997 and thus required the Human Rights Commission to study minority and woman owned business participation in City contracting prior to the expiration of Ordinance No. 155-92;

And the Human Rights Commission pursuant to Section 12D.15(E) of Ordinance No. 155-92, through its MBE/WBE/LBE Community Advisory Committee and at its regular and special meetings, having received public testimony concerning the City's compliance with Ordinance No. 155-92;

And the Human Rights Commission on January 13, 1997 having hired Mason Tillman Associates to conduct a disparity study which will be concluded on or before August 31, 1997;

And the Human Rights Commission, pursuant to Section 12D.15(E) of Ordinance No. 155-92 having conducted public hearings on January 29, 1997, February 19, 1997 and February 27, 1997;

And the Human Rights Commission having received from Mason Tillman Associates a statistical analysis of the MBE/WBE/LBE Progress Reports for fiscal years 1992-93, 1993-94 and 1994-95 suggesting continuing patterns of underutilization of certified MBE and WBE contractors;

And the Human Rights Commission having submitted to this Board its March 3, 1997 "Resolution Certifying HRC Findings to the Board of Supervisors Supporting the Extension of the MBE/WBE/LBE Ordinance" as well as supporting data and analyses;

And the Human Rights Commission having resolved to transmit to this Board by August 31, 1997, the completed disparity study which will

assist this board in determining whether the purposes identified in Section 12D.3 have been achieved;

And this board incorporating by reference the findings set forth in Sections 12D.2 and 12D.2-1 above;

And this Board, having reviewed the MBE/WBE/LBE Progress Reports for fiscal years 1992-93, 1993-94, and 1994-95 and other supporting data (all of which shall be incorporated by reference) and having conducted public hearings on April 24, 1997 on the MBE/WBE program and policies and on May 8, 1997 at which the Board received additional testimony and written submittals from the public (which shall be incorporated by reference), finds that there is a good faith basis for concluding that the purposes identified in Section 12D.3 have not yet been achieved;

This Board hereby finds that there is a good faith basis to extend Ordinance 155-92, as amended, for a six-month period during which time this Board, with the assistance of the Human Rights Commission and the City Attorney, will continue with the process of fact finding to ascertain whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved. (Added by Ord. 210-97, App. 5/30/97)

SEC. 12D.2-3. FURTHER ADDITIONAL FINDINGS SUPPORTING THREE-MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE—III.

On November 5, 1996, Californians voted to adopt the California Civil Rights Initiative (Proposition 209) as an amendment to their Constitution. Proposition 209 provides that the State and its subdivisions shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity or national origin in the operation of public employment, education or contracting.

On December 23, 1996, the United States District Court for the Northern District of California, granted a preliminary injunction to prevent the implementation of Proposition 209. However, on April 8, 1997, the Ninth Circuit in

Coalition v. Wilson reversed the district court's ruling and upheld as constitutional Proposition 209. Then on August 21, 1997, the Ninth Circuit denied the petition for rehearing the decision in *Coalition v. Wilson*. Finally, on November 3, 1997, the United States Supreme Court denied the petition for certiorari and let stand the Ninth Circuit's decision to uphold Proposition 209 as constitutional.

As a result of the Ninth Circuit's ruling, Mason Tillman Associates will have to consider the impact, if any, of Proposition 209 on its disparity study commissioned by the Human Rights Commission on January 13, 1997.

And although this Board expected to receive the disparity study on or before August 31, 1997, which was on an expedited schedule, the San Francisco International Airport's data requires additional verification in order to complete the disparity study. This circumstance has caused the compilation of the study's date to take longer than originally anticipated;

And where the Mayor's Office and other City departments should have an opportunity to provide comment as to any proposed legislative changes to the ordinance before the legislation is introduced at the Board;

And this Board incorporating by reference the findings set forth in Sections 12D.2, 12D.2-1 and 12D.2-2 above;

This Board hereby finds that there is a good-faith basis to extend Ordinance 155-92, as amended by Ordinance 210-97, for a three-month period during which time this Board, with the assistance of the Human Rights Commission and the City Attorney, will (1) complete the compilation of the data sufficient to ascertain whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and (2) receive comment on proposed legislative changes, if any, to the ordinance in light of the findings and recommendations set forth in the disparity study. (Added by Ord. 457-97, App. 12/15/97)

SEC. 12D.2-4. ADDITIONAL FINDINGS SUPPORTING A THREE-MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE.

On November 3, 1997, the United States Supreme Court denied the petition for writ of certiorari in *Coalition for Economic Equity et al. v. Pete Wilson et al.* As a result of the Supreme Court's decision not to grant review, Mason Tillman Associates and the City continue to consider the impact, if any, of Proposition 209 on the Disparity Study commissioned by the Human Rights Commission on January 13, 1997;

And although a draft disparity study has been presented to the Human Rights Commission, several new questions regarding the data and how it should be analyzed have been raised by the Human Rights Commission and members of the public. In light of the concerns raised, Mason Tillman Associates and the Human Rights Commission have determined that additional data gathering and analysis is necessary in order to accurately determine whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and what remedy, if any, is necessary to ensure that there is no discrimination in public contracting in the City and County of San Francisco.

And this Board incorporating by reference the findings set forth in Section 12D.2, 12D.2-1, 12D.2-2 and 12D.2-3 above;

This Board hereby finds that there is a good faith basis to extend Ordinance 155-92, as amended by Ordinance 210-97 and 457-97, for a three-month period during which time this Board, with the assistance of the Human Rights Commission and the City Attorney, will (1) complete the compilation of the data sufficient to ascertain whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and (2) receive comment on proposed legislative changes, if any, to the ordinance in light of the findings set forth in the final disparity study. (Added by Ord. 82-98, App. 3/6/98)

SEC. 12D.2-5. ADDITIONAL FINDINGS SUPPORTING A TWO-MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE—III.

On November 3, 1997, the United States Supreme Court denied the petition for writ of certiorari in *Coalition for Economic Equity et al. v. Pete Wilson et al.* As a result of the Supreme Court's decision not to grant review, Mason Tillman Associates and the City considered the impact, if any, of Proposition 209 on the Disparity Study commissioned by the Human Rights Commission on January 13, 1997;

And although a draft disparity study was presented to the Human Rights Commission, several new questions regarding the data and how it should be analyzed were raised by the Human Rights Commission and members of the public. In light of the concerns raised, additional necessary data gathering and analysis were conducted. Additional time is needed in order to accurately determine whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and what remedy, if any, is necessary to ensure that there is no discrimination in public contracting in the City and County of San Francisco.

And this Board incorporation by reference the findings set forth in Section 12D.2, 12D.2-1, 12D.2-2, 12D.2-3 and 12D.2-4 above;

This Board hereby finds that there is a good faith basis to extend Ordinance 155-92, as amended by Ordinance 210-97, 457-97, 82-98, for a two-month period during which time this Board, with the assistance of the Human Rights Commission and the City Attorney, will (1) complete the compilation and analysis of the data sufficient to ascertain whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and (2) receive comment on proposed legislative changes, if any, to the Ordinance in light of the findings set forth in the final Disparity Study. (Added by Ord. 186-98, App. 6/5/98)

SEC. 12D.2-6. ADDITIONAL FINDINGS SUPPORTING A TWO-MONTH EXTENSION OF MBE/WBE/LBE ORDINANCE.

In light of the United States Supreme Court's denial of the petition for writ of certiorari in *Coalition for Economic Equity et al. v. Pete Wilson et al.* several new questions with respect to the data collected for the City's disparity study and how it should be analyzed were raised. Because of those concerns, the Human Rights Commission in March of this year embarked upon additional data gathering and analysis in order to accurately determine whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and what remedy, if any, is necessary to ensure that there is no discrimination in public contracting in the City and County of San Francisco.

Although the Human Rights Commission has succeeded in gathering such additional data, the data gathering process is not yet complete. Consequently, the analysis of the data is not complete. Additional time is needed in order to accurately determine whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and what remedy, if any, is necessary to ensure that there is no discrimination in the procurement process of the City and County of San Francisco.

This Board incorporates by reference findings set forth in Sections 12D.2, 12D.2-2, 12D.2-3, 12D.2-4 and 12D.2-5 above;

This Board hereby finds that there is a good faith basis to extend Ordinance 155-92, as amended by Ordinances 210-97, 457-97, 82-98 and 186-98 for a two-month period during which time this Board, with the assistance of the Human Rights Commission and the City Attorney, will (1) complete the compilation and analysis of the data to ascertain whether a strong basis in evidence exists for concluding that the purposes identified in Section 12D.3 have not been achieved and (2) receive comment on proposed legislative changes, if any, to the ordinance in light of the

findings set forth in the final disparity study. (Added by Ord. 256-98, App. 7/31/98)

SEC. 12D.3. DECLARATION OF POLICY.

It is the policy of the City and County of San Francisco to ensure full and equitable opportunities for Minority Business Enterprises, Woman Business Enterprises, and local businesses to participate as prime contractors in the provision of goods and services to the City. This program is intended to correct identified discriminatory practices inherent in the City's procurement process and in the award of prime contracts to MBE/WBEs and to develop their status and capability as prime contractors of the City. Another goal of this Ordinance is to offset some of the economic disadvantages local businesses continue to face that are not shared by nonlocal businesses.

The City will continue to rely on the relationship between the percentages of minority (each ethnic group identified as a minority) and woman owned businesses in the relevant sector of the San Francisco business community and their respective shares of City contract dollars as a measure of the effectiveness of this Ordinance in remedying the effects of the aforementioned discrimination.

The City is continuing to use a preference for local business in the award of City contracts in order to encourage business to locate and remain in San Francisco and thereby enhance employment opportunities for persons living in San Francisco. The cost of locating and doing business in San Francisco continues to be as much as 15 percent and greater than the cost of doing business in the surrounding communities; affording a five-percent bid preference for local businesses bidding on City contracts reduces the disadvantages under which City-located businesses labor when competing for City contracts, affording them a five-percent bid preference makes good sense. In effect the bid preference assists these businesses in contributing to the economic health of the City. The five-percent bid preference does not unduly hamper non-local businesses in the contracting process, and parallels

the preferences awarded in many other local jurisdictions. (Added by Ord. 175-89, App. 5/30/89)

SEC. 12D.4. SCOPE.

The race- and gender-conscious bid preferences of this Ordinance shall be afforded only to economically disadvantaged minority and woman owned businesses in all specifically enumerated categories of City contracts for the procurement of goods and services subject to exemptions hereinafter specifically enumerated. The local business bid preference shall be afforded to all local businesses in the award of all City contracts for the procurement of goods and services subject to exceptions hereinafter specifically enumerated in Section 12D.13. (Added by Ord. 175-89, App. 5/30/89)

SEC. 12D.5. DEFINITIONS.

"Annual participation goals" shall mean the targeted levels of City-wide MBE/WBE participation in City prime contracts that reflect the relevant share of MBEs or WBEs in a given industry or profession referred to as "percent availability" in the utilization indices contained in Appendix X to this Ordinance.

"Award of a contract" occurs when a contract is certified by the Controller of the City and County of San Francisco.

"Back contracting" shall mean any agreement or other arrangement between a prime contractor and its subcontractor where the prime contractor performs or secures the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefits of the subcontract. Said agreement or other arrangement includes, but is not limited to, situations where either a contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

"Bid" shall mean and include a quotation, proposal, solicitation or offer by a bidder or

contractor to perform or provide labor, materials, equipment, supplies or services to the City and County of San Francisco for a price.

"Bidder" shall mean any business that submits a quotation, bid or proposal to provide labor, materials, equipment, supplies or services to the City and County of San Francisco.

"City" shall mean the City and County of San Francisco.

"Commercially useful function" for purposes of determining whether a business is a Minority Business Enterprise, Woman Business Enterprise or Local Business Enterprise shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. MBEs, WBEs or LBEs who engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the department.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Concession" shall include any grant of land or other property by or on behalf of the City and County of San Francisco to a person for the purpose or use specified in said grant. A "concession" shall not include an agreement to perform construction-related services.

"Contract" shall mean and include any agreement between the City and a person to provide or procure labor, materials, equipment, supplies or services to, for or on behalf of the City and County of San Francisco. A "contract" shall include an agreement between the City and a person or nonprofit entity to perform construction-related services or fund the performance of such services. Except as otherwise specifically defined in this section, a "contract" does not include: (1) awards made by the City with Federal/State grant or City general fund monies to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and

the recipient of the grant award uses the grant monies to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise, or concession agreements; (5) agreements to use City real property; or (6) gifts of materials, equipment, supplies or services to the City.

"Contract awarding authority" shall mean the City officer, department, commission, employee or board authorized to enter into contracts on behalf of the City. In the case of an agreement with a person or nonprofit entity to perform or fund the performance of construction-related services, the term "contract awarding authority" shall mean the person or nonprofit entity receiving funds from the City to perform or fund the performance of such services.

"Contractor" shall mean any person(s), firm, partnership, corporation, or combination thereof, who submits a bid to perform, performs any part of, agrees with a person to provide services relating to and/or enters into a contract with department heads and officers or contract awarding authorities empowered by law to enter into contracts on the part of the City for public works or improvements to be performed, or for goods or services or supplies to be purchased at the expense of the City or to be paid out of monies deposited in the treasury or out of trust monies under the control of or collected by the City.

"Controlled" for the purposes of determining whether a business is a Minority Business Enterprise, or Woman Business Enterprise, shall mean the minority(ies), the woman or combination of minorities and women, as the context requires, shall (1) possess legal authority and power to manage business assets, good will and daily operations of the business; and (2) actively and continuously exercise such authority and power in determining the policies and directing the operations of the business.

"Director" shall mean the Director of the Human Rights Commission of San Francisco.

"Economically disadvantaged business" shall mean a business whose average gross annual

receipts in the three fiscal years immediately preceding its application for certification as a MBE, WBE or LBE do not exceed the following limits: (1) Public works/construction—\$14,000,000; (2) Goods/materials/equipment and general services suppliers—\$2,000,000; (3) Professional services—\$2,000,000.

"Equipment and supplies contract" shall mean term purchase agreements, contract orders, purchase orders and any other agreement for the purchase of transportation equipment, office supplies, data processing and office equipment, hospital and medical equipment and supplies, food, building supplies, fire/safety equipment and supplies, clothing, miscellaneous and electrical equipment and supplies. The term "equipment and supplies contract" shall not include contracts for fuels, lubricants and illuminants.

"Franchise" shall mean and include the right or privilege conferred by grant from the City and County of San Francisco, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in the grant. A "franchise" shall not include an agreement to perform construction-related services.

"General services contract" shall mean term purchase agreements, contract orders, purchase orders and any other agreement for the procurement of janitorial, security, equipment and computer maintenance, miscellaneous, printing and graphics services.

"Good-faith efforts" when required of a contract awarding authority or department shall mean the actions undertaken by a department to obtain MBE or WBE participation in a contract as prime contractors, and shall include the following efforts: (1) encouraging MBE/WBEs to attend pre-bid meetings, scheduled by a department or the Commission, to inform potential contractors of contracting opportunities; (2) advertising in general circulation media, trade association publications and minority/woman business focus media; (3) notifying MBE/WBEs who are available to perform the work contemplated in a contract, soliciting their interest in the contract; (4) dividing the contract work into

economically feasible units to facilitate MBE/WBE participation in the contract; (5) pursuing solicitations of interest by contacting MBE/WBEs to determine whether these businesses are interested in participating on the contract; (6) providing MBE/WBEs with adequate information about the plan, specifications and requirements of the contract; (7) where applicable, negotiating with MBE/WBEs in good faith and demonstrating that MBE/WBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capabilities; and (8) using the services of available community and contractors' groups, local, State or Federal minority and woman business assistance offices that provide assistance in the recruitment of MBE/WBEs for public sector contracts.

"Good-faith efforts" when required of a prime public works/construction contractor or professional services provider shall mean the steps undertaken to comply with the goals and requirements imposed by the City for participation by minority and women business enterprises as subcontractors, and shall include the following:

(1) Attending any presolicitation or prebid meetings scheduled by the City to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded;

(2) Identifying and selecting specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises;

(3) Advertising, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade-oriented publications, trade journals, or other media, specified by the City for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids are opened;

(4) Providing written notice of his or her interest in bidding on the contract to the number of minority or women business enterprises re-

quired to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. The City shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the Director as minority or women business enterprises;

(5) Following up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project;

(6) Providing interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;

(7) Requesting assistance from minority and women community organizations; minority and women contractor or professional groups; local, State or Federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available;

(8) Negotiating in good faith with the minority or women business enterprises, and not unjustifiably rejecting as unsatisfactory bids or proposals prepared by any minority or women business enterprises, as determined by the City;

(9) Where applicable, advising and making efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the City or contractor;

(10) Making efforts to obtain minority and women business enterprise participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

"Human Rights Commission (HRC)" shall mean the Human Rights Commission of San Francisco, consisting of Commissioners appointed by the Mayor; hereinafter, it shall be referred to as the "Commission."

"Joint venture" shall mean and may be referred to as an "Association" of two or more businesses acting as a contractor and performing

or providing services on a contract, in which each joint venture or association partner combines property, capital, efforts, skill, and/or knowledge.

"Lease" shall mean and include an agreement by which the City and County of San Francisco or any contracting agency thereof, grants to a person the temporary possession and use of property for reward, and the latter agrees to return the same to the former at a future time. A "lease" shall not include an agreement to perform construction-related services.

"Local business" or "Local business enterprise (LBE)" shall mean an economically disadvantaged business which is an independent and continuing business for profit, performs a commercially useful function and is a firm:

(1) With fixed offices or distribution points located within the geographical boundaries of the City and County of San Francisco;

(2) Listed in the Permits and License Tax Paid File with a San Francisco business street address; and

(3) Which possesses a current Business Tax Registration Certificate at the time of the application for certification as a local business. Post Office box numbers or residential addresses shall not suffice to establish status as a "local business." To qualify as a "local business" or "LBE" a business must establish that it has been located and doing business in San Francisco for at least six months preceding its application for certification as a local business.

"Lower-tier subcontracting" shall mean any agreement or other arrangement between a subcontractor and a person as defined herein where it is agreed that said person shall perform any term, condition or obligation imposed by the subcontract upon the subcontractor.

"Minority," "minorities," or "minority person" shall mean members of one of the following ethnic groups: Asians (defined as Chinese, Japanese, Koreans, Pacific Islanders, Samoans, Filipinos, Asian Indians, and Southeast Asians), Blacks, and Latinos (defined as Mexicans, Puerto Ricans, Cubans, Central or South Americans).

"Minority Business Enterprise (MBE)" shall mean an economically disadvantaged local business which is an independent and continuing business for profit, performs a commercially useful function, and is owned and controlled by one or more minority persons residing in the United States or its territories.

"Miscellaneous professional services" shall mean all professional services except legal, architect/engineer, computer systems, management consulting and medical services.

"Office" or "offices" shall mean a fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an "office" under the Ordinance.

"Owned," for purposes of determining whether a business is a minority business enterprise or woman business enterprise, shall mean that the minorities or women as the context requires, shall possess an ownership interest of at least 51 percent of the business, and shall:

- (1) Possess incidents of ownership, such as an interest in profit and loss, equal to at least the required ownership interest percentage; and

- (2) Contribute capital, equipment and expertise to the business equal to at least the required ownership percentage.

Ownership of an individual seeking MBE or WBE certification shall be measured as though the applicant's ownership is not subject to the community property interest of a spouse, if both spouses certify that (a) only the woman or minority spouse participates in the management of the business and (b) the nonparticipating spouse relinquishes control over his/her community property interest in the subject business; or both spouses have bona fide management and control of the business.

"Participation commitment" shall mean the targeted level of MBE/WBE subcontractor participation that each prime public works/construction contractor or professional service provider has designated in its bid.

"Participation goals" shall mean the targeted levels of City-wide MBE/WBE participation in City prime contracts that reflect the relevant share of MBEs or WBEs in a given industry or profession referred to as "percent availability" in the utilization indices contained in Appendix X to this Ordinance.

"Percent availability": see "Participation goals."

"Person" includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, or any group of persons, including any official, agent or employee of the City and County of San Francisco.

"Professional services contract" shall mean agreements for the procurement of legal, architect/engineer, computer systems, management consulting, medical services and miscellaneous professional services.

"Public works/construction contract" shall mean agreements for the construction, reconstruction or repair of public buildings, streets, utilities or other public works or improvements.

"Set aside" when referring to a contract or project shall mean a procurement or contract award process where competition for a contract or project is limited to MBEs, WBEs and/or joint ventures with MBE/WBEs.

"Subcontractor" shall mean any business providing goods or services to a contractor for profit, if such goods or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City and County of San Francisco.

"Subcontractor participation goals" shall mean the targeted level of MBE/WBE subcontractor participation designated by the Director for prime public works/construction and professional services contracts.

"Woman Business Enterprise (WBE)" shall mean an economically disadvantaged local business which is an independent and continuing business for profit, performs a commercially useful function and is owned and controlled by one or more women residing in the United States or its territories.

"Woman/Minority Man Business Enterprise (W/MBE)" shall mean an economically disadvantaged local business which meets the definition of an MBE or WBE, except that the aggregate ownership interest of the woman and the minority man equals or exceeds 51 percent of the business. An W/MBE shall qualify and be deemed by a department an MBE or WBE, but not both, for purposes of this Ordinance. Any reference in this Ordinance to MBE or WBE includes a W/MBE. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 283-91, App. 6/12/91; Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92; Ord. 284-92, App. 9/16/92)

SEC. 12D.6. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.

(A) In addition to the duties and powers given to the Human Rights Commission elsewhere, the Commission shall:

1. Collect and analyze relevant data which will assist the Board of Supervisors in determining whether race- or gender-conscious remedies are appropriate and necessary for contracts not subject to or ethnic groups not afforded the race- and gender-conscious bid preferences of this ordinance. The Commission shall periodically report the results of this study to this Board;

2. Levy sanctions as specified in Section 12D.8(B)(7);

3. When necessary, subpoena persons and records, books and documents for a proceeding of the Commission or an investigation by the Director conducted to further the purposes of this ordinance;

4. Amend existing rules and regulations establishing standards and procedures for effectively carrying out this ordinance. The rules and regulations shall provide for administrative procedures which will allow a business to prove and the Commission to recommend to this Board that the ordinance's remedial measures should not be applied to an industry or profession because MBE/WBE participation in City prime contracts has reached parity with their numbers in the relevant business community and MBE/WBEs

no longer suffer from a discrimination-induced competitive disadvantage in the applicable industry or profession. The regulations shall also provide a mechanism for contractors to seek a determination by the Director that a MBE or WBE may not be granted a race- or gender-conscious bid preference where it is demonstrated that the MBE or WBE's bid price is not attributable to the effects of past discrimination.

(B) In addition to the duties and powers given to the Director elsewhere, the Director shall have the following duties and powers:

1. Through appropriately promulgated procedures, certify businesses as bona fide MBEs/WBEs/LBEs. These procedures shall provide that any business seeking certification as a local business shall meet the definition of a LBE and possess or establish all of the following: (1) business cards for the San Francisco office; (2) business stationery for the San Francisco office; (3) written agreement for occupancy of the San Francisco office; (4) that the business is listed in an appropriate business buyers guide such as a telephone yellow pages listing San Francisco based businesses; (5) that business is transacted in the San Francisco office; (6) a conspicuously displayed business sign at the San Francisco business premises except where the business operates out of a residence; and (7) the office is appropriately equipped for the type of business for which certification as a LBE is sought.

Except where the Director cannot certify a business because the business has not been established in San Francisco for the requisite six months, whenever the Director denies an application for or revokes the certification of a business as a MBE, WBE, LBE because the business is not a bona fide MBE, WBE, LBE, the Director shall inform the aggrieved business in writing when the business will be eligible to reapply for certification. The Director shall require a business to wait at least six months but not more than two years after the denial or revocation before reapplying to the Director for certification as a MBE, WBE or LBE. Except as provided in Section 12D.14(C), the Director's denial or revo-

cation of certification of a business as a MBE, WBE, LBE shall not be appealable to the Commission;

2. Annually, and more often if he deems necessary, analyze the most recently available data on "percent availability" of MBEs and WBEs in the various industries and professions identified in the utilization indices set forth in Appendix X to this ordinance and the Human Relations Commission's 1992 Sunset Report. Applying statistically sound methods of analysis, the Director shall identify areas of contracting where the City or its departments are failing to meet the participation goals to such an extent that an inference of discrimination can be made. In addition, the Director shall identify areas of contracting where the City is meeting and/or exceeding participation goals to such an extent that the MBE or WBE bid preferences can no longer be justified. The results of this study shall be included in the Commission's annual report required by Section 12D.15(C).

Not later than March 1st of each fiscal year, the Director shall transmit to the Board of Supervisors proposed amendments to this ordinance and the utilization indices necessitated by the data he has collected and analyzed;

3. By July 1st of each fiscal year subject to this ordinance, inform the Controller of the data each department is required to provide the Controller on each contract award. This data shall form the basis of the Commission's report to the Mayor and the Board of Supervisors and the public on the participation of MBEs and WBEs on City prime contracts subject to the ordinance;

4. Provide information and other assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;

5. Assist the City to increase participation by MBEs and WBEs in City contracts;

6. Continue to develop and strengthen education and training programs for MBEs and WBEs and City contract awarding personnel;

7. Where after determining that a department, despite its good-faith efforts and application of the bid preference(s), has failed substan-

tially to eliminate the exclusion of MBEs and/or WBEs from City contracting, the Director, after consulting with the department responsible for the project(s), may request the Contract Review Committee established in Section 12D.8.(A)(3) to review and approve the proposed project(s) for a set aside;

8. Work with the Controller and representatives of City departments to implement a City-wide prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City within 60 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City.

(C) The requirements of this ordinance are separate from those imposed by the United States or the State of California as a condition of financial assistance or otherwise; however, the Director may authorize the substitution of such State or federal Minority Business Enterprise and Women Business Enterprise requirements for the requirements of this ordinance whenever such State or federal requirements are substantially the same as those of this ordinance.

(D) The Director, with the approval of the Commission, may enter into cooperative agreements with agencies, public and private, concerned with increasing the utilization of MBEs and WBEs in government contracting, subject to the approval of the Board of Supervisors of the City and County of San Francisco. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 155-92, App. 5/29/92; Ord. 278-96, App. 7/3/96)

SEC. 12D.7. POWERS AND DUTIES OF THE CONTROLLER.

(A) In addition to the duties given to the Controller elsewhere, the Controller shall work cooperatively with the Director to assemble and maintain the data the Director advises are necessary to form the basis of the Commission's report to the Mayor, Board of Supervisors and the public on the participation of MBEs and WBEs in City prime contracts.

(B) The Controller shall not certify the award of any contract subject to this ordinance until the department requesting certification of the award of the contract has provided the Controller with the information the Director advises is necessary under this ordinance.

(C) It is the City's policy that MBEs, WBEs and LBEs should be paid by the City within 30 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City. The Controller shall work with the Director and representatives of City departments to implement this City-wide prompt-payment policy. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92; Ord. 398-95, App. 12/22/95; Ord. 278-96, App. 7/3/96)

SEC. 12D.8. POWERS AND DUTIES OF THE MAYOR, DEPARTMENTS OR CONTRACT AWARDING AUTHORITIES.

(A) In addition to the duties given to the Mayor elsewhere, the Mayor shall:

1. By July 1st of each fiscal year subject to this ordinance, issue notices to all City departments informing them of their duties under this ordinance. The notice shall contain the following information: (1) the City-wide MBE/WBE participation goals that departments are expected to use good-faith efforts to attain during the fiscal year and that a department's failure to use good-faith efforts to attain the MBE/WBE participation goals shall be reported to the Board of Supervisors in the Commission's annual report; and (2) the data each department is required to provide the Controller on each contract award;

2. Coordinate and enforce cooperation and compliance by all departments with this ordinance;

3. Establish a three-member Contract Review Committee who shall have the authority to review contracts proposed by the Director or a department to be set aside, where competition for these contracts is limited to MBEs, WBEs and/or joint ventures with MBE/WBEs. The three-member Contract Review Committee shall be composed of the HRC Director, an individual appointed by the Board of Supervisors and an

individual appointed by the Mayor. The Board and the Mayor shall appoint individuals who are knowledgeable about contracting practices of the City and of the industry or profession affected by the set-aside of the contract;

4. Establish a three-member Subcontracting Goals Committee which shall have the authority to review decisions by the Director denying a contractor's request, pursuant to Section 12D.9(D)-(4) or 12D.11(A)-(6), to waive or reduce subcontractor participation goals. The three-member Subcontracting Goals Committee shall be composed of an individual appointed by the Commission, an individual appointed by the Board of Supervisors and an individual appointed by the Mayor. The Commission, the Board of Supervisors and the Mayor shall appoint individuals who are knowledgeable about the City's contracting and subcontracting practices and the relevant construction or professional service industry. The Commission, the Board of Supervisors, or the Mayor may not appoint to the Subcontracting Goals Committee the Director or any employee of the Human Rights Commission.

(B) Contract awarding authorities or in the case of a professional services contract, the department making the contract award recommendation, shall:

1. Use good-faith efforts to solicit and obtain quotes, bids or proposals from MBEs and WBEs on all solicitations, or document their unavailability;

2. Unless otherwise indicated in this ordinance and except where prohibited by State or Federal law or regulation, extend a preference in all bids and contracts and in the composition of rating scales as follows: (1) a five-percent preference to (i) a local business or (ii) a joint venture with local MBE or local WBE participation which equals or exceeds 35 percent but is under 40 percent; or (iii) where a joint venture is composed of only local businesses with no local MBE or WBE participation or where the local MBE or local WBE participation is less than 35 percent; (2) a seven and one-half percent (7.5%) preference to (i) a joint venture with local MBE or WBE participation which equals or exceeds 40 percent

but is less than 51 percent; (3) a 10-percent preference to (i) a local MBE or local WBE or (ii) a joint venture with local MBE or local WBE participation which equals or exceeds 51 percent.

A joint venture shall receive the aforementioned appropriate bid preference when the MBE or WBE is an active partner in the joint venture and performs work, manages the job and takes financial risks in proportion to the required level of participation stated in the bid documents and is responsible for a clearly defined portion of the work to be performed, and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the MBE or WBE joint venturer's work shall be set forth in detail separately from the work to be performed by the nonMBE or nonWBE joint venture partner. The MBE or WBE joint venturer's portion of the contract must be assigned a commercially reasonable dollar value;

3. Arrange contracting by size and type of work to be performed so as most effectively to enhance the opportunity for participation by MBEs and WBEs to the maximum extent feasible. As soon as practical before soliciting quotes, bids or proposals, all contract awarding authorities or in the case of a professional services contract, the department making the contract award recommendation, shall submit all large proposals to the Director for review. The purpose of the Director's review is to determine whether the proposed project can be divided into smaller projects so as to enhance the opportunity for participation by MBEs and WBEs in the project. For purposes of this subsection, the term "large project" shall mean the following: (1) any public works/construction project estimated to cost more than \$5,000,000; (2) any professional services contract estimated to cost more than \$50,000. If the Director determines, after consulting with the contract awarding authority or department responsible for the project, that the project can be divided into smaller projects, the contract awarding authority or department shall comply with the Director's determination and issue the solicitation for quotes, bids or proposals in accordance with the Director's determination;

4. Adjust bid bonding and insurance requirements as recommended by the City Risk Manager in his May 2, 1989 "Contract Insurance Manual";

5. Utilize a revolving fund as may be established by the City to assist MBEs and WBEs to meet bonding, insurance and other fee-related requirements;

6. Submit to a central office all current bids, requests for proposals, and solicitations with sufficient lead time to provide adequate notice and opportunity to MBEs and WBEs to participate;

7. Impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this ordinance, which shall include, but are not limited to:

- (a) Refusal to grant the award of a contract;
- (b) Order the suspension of a contract;
- (c) Order the withholding of funds;
- (d) Order the revision of a contract based upon a material breach of contract provisions pertaining to MBE or WBE participation;
- (e) Disqualification of a bidder, contractor, subcontractor, or other business from eligibility for providing goods or services to the City for a period not to exceed five years, with a right to review and reconsideration by the Commission after two years upon a showing of corrective action indicating violations are not likely to recur;

8. Not award any contract to a person or business which is disqualified from doing business with the City under the provisions of this ordinance, nor shall any contract be awarded to any person or business which is disqualified from doing business with any governmental agency based on failure to comply with Minority or Women Business Enterprise or contract compliance requirements which are substantially the same as those of this ordinance;

9. Designate a staff person to be responsible for responding to the Director and Commission and to the requirements of this ordinance;

10. Maintain accurate records for each contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts made by a construction, architect/engineer contractor to solicit bids from and award subcontracts to MBEs and WBEs;

11. Where feasible, provide technical assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;

12. Work with the Director and the Controller to implement a City-wide prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City within 30 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City;

13. Provide the Director with written notice of all contract modifications which result in an increase or decrease of the contract's dollar amount of more than 10 percent. Such notice shall be provided within 30 days of each such contract modification.

(C) Subject to the prior approval of the Director, contract awarding authorities or departments may invite, encourage or request businesses to joint venture on any contract to promote MBE or WBE participation.

(D) For the purpose of determining Minority and Women Business Enterprise participation:

Contracts awarded to joint ventures in which one or more MBEs or WBEs are combined with one or more businesses which are not Minority or Women Business Enterprises shall be deemed to be awarded to Minority or Women Business Enterprises only to the extent of the Minority or Women Business Enterprises' participation in the joint venture.

(E) All contracts subject to this ordinance shall include the following requirements, in addition to such other requirements as may be set forth elsewhere:

1. Bidders and contractors on all contracts shall be required to sign before a notary an affidavit prepared by the City Attorney, declaring under penalty of perjury their intention fully to comply with the provisions of the ordinance;

2. Contracts shall incorporate this ordinance by reference and shall provide that the wilful failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract;

3. Contracts shall provide that in the event that the Director finds that any bidder, subcontractor or contractor wilfully fails to comply with any of the provisions of this ordinance, rules and regulations implementing the ordinance or contract provisions pertaining to MBE or WBE participation the bidder, subcontractor or contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's or contractor's net profit on the contract, or 10 percent of the total amount of the contract or \$1,000, whichever is greatest, said amount to be determined by the Director pursuant to Section 12D.14(C). All contracts shall also contain a provision in which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder, subcontractor or contractor from any contract with the City;

4. Contracts shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with this ordinance;

5. Contracts shall require that during the term of the contract, the prime contractor shall fulfill the MBE and WBE participation commitments submitted with their bid;

6. Contracts shall require prime contractors to include a contract provision in any subcontract with an MBE or WBE which provides MBE and WBE subcontractors with a remedy for a prime contractor's noncompliance with his or her commitment to utilize MBE and WBE subcontractors. This contractual provision shall include an agreement by the prime contractor to compensate any MBE or WBE subcontractor if the prime contractor does not fulfill its commitment to utilize the MBE or WBE subcontractor. This contractual provision shall also state that it is enforceable in a court of competent jurisdiction;

7. Whenever contract supplements, amendments or change orders are made which cumulatively increase the total dollar value of a construction contract by more than 10 percent, the contractor shall comply with those MBE and WBE provisions of this ordinance which applied to the original contract with respect to the supplement, amendment, or change order;

8. Contracts in which subcontracting is utilized shall prohibit back contracting to the prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE and WBE utilization.

9. Contracts in which subcontracting is utilized shall require the prime contractor/consultant to pay its MBE or WBE subcontractor/subconsultants within three working days after receiving payment from the City unless the prime contractor/consultant notifies the Director in writing within 10 working days prior to payment that there is a bona fide dispute between the prime contractor/consultant and the MBE or WBE subcontractor/subconsultant. The Director may, upon making a determination that a bona fide dispute exists between the prime contractor/consultant and subcontractor, waive this contract requirement. In making the determination as to whether or not a bona fide dispute exists, the Director will not consider the merits of the dispute.

(F) All contracts or other agreements between the City and County of San Francisco and persons or entities, public or private, where such persons or entities receive money from or through the City for the purpose of contracting with businesses to perform public improvements, shall require such persons or entities to comply with the provisions of this ordinance in awarding and administering such contracts, except where prohibited by State or Federal law or regulation.

(G) Where a department can demonstrate, despite its good-faith efforts and application of the bid preference(s), that it has failed substantially to eliminate the exclusion of MBEs or WBEs from City contracting, the department,

after consulting with the Director, may request the Contract Review Committee established in Section 12D.8(A)(3) to review and approve the proposed project(s) selected by the department for a set-aside.

(H) City department heads and commissioners shall attend a one-hour mandatory training session on an annual basis. The training session shall be organized and conducted by the Director and shall inform City department heads and commissioners of the requirements of this ordinance. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92; Ord. 284-92, App. 9/16/92; Ord. 399-95, App. 12/22/95; Ord. 278-96, App. 7/3/96)

SEC. 12D.9. ADDITIONAL FINDINGS SUPPORTING RACE- AND GENDER-CONSCIOUS BID PREFERENCES AND SUBCONTRACTOR PARTICIPATION GOALS—PUBLIC WORKS/CONSTRUCTION; SUBCONTRACTING PROGRAM.

(A) In addition to the general findings set forth in Sections 12D.2, 12D.2-1, 12D.2-2, 12D.2-3, 12D.2-4, 12D.2-5 and 12D.2-6 and based upon the record before this Board, the Board hereby makes these additional findings in support of the race- and gender-conscious bid preference provisions and subcontractor participation goals for public works/construction contracts:

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices against MBEs and WBEs in the award of prime public works/construction contracts.

2. The evidence before this Board relating to the award of prime public works/construction contracts for fiscal year 1987-1988 reflects that MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars in amounts that are disproportionately lower than the available number of MBE and WBE prime public works/construction contractors willing and able to perform City construction work. The evidence before this Board relating to the participation of MBE/WBE prime and

subcontractors on City construction contracts for fiscal year 1989-1990 reflects that MBEs (each ethnic group identified as a minority) and WBEs continue to be awarded contract dollars in amounts that are disproportionately lower than the available number of MBE and WBE prime and subcontractors willing and able to perform construction work. The statistical results are the same for MBEs for fiscal year 1990-91. These results cannot be attributed to chance. In light of the testimony before this Board and the Commission in 1983, 1984, 1988, 1989 and 1992, and the Redevelopment Agency in 1991, this Board finds that these results can be attributed in part to discriminatory procurement practices and in part to discrimination in the local construction industry against MBEs and WBEs that is manifested in and perpetuated and exacerbated by the City's procurement practices.

3. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City prime construction contracts. The weight of the testimony and other evidence before this Board supports the conclusion that nonminority construction contractors competing for or doing business with the City and/or in the public sector limit the participation of MBE and WBE subcontractors on construction contracts by engaging in discriminatory business practices.

4. Race-neutral measures employed by the City in the past for those construction contracts subject to the "lowest, reliable, responsible bidder" standard did not prevent the discriminatory practices from occurring. Since February 1989 the City has pursued race-neutral measures to facilitate MBE/WBE subcontractor participation in construction contracts. From about February 1st to June 30, 1989 the City adopted a race-neutral disadvantaged business program for its construction contracts. Since July 1, 1989 the City has urged prime construction contractors to voluntarily extend subcontracting opportunities to MBE/WBE subcontractors on City construction contracts. These race- and gender-neutral

measures employed by the City have not been successful in increasing MBE/WBE subcontractor participation in City construction contracts.

5. The Board is granting a competitive advantage, the bid preference, to prime MBEs and WBEs to offset the identified competitive disadvantage caused by the City's discriminatory procurement practices.

6. The evidence before this Board relating to the award of prime public works/construction contracts for fiscal year 1990-1991 reflects that WBEs have improved their participation in City construction contracts. However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary for WBEs competing for construction contracts to overcome past discrimination in the award of construction prime and sub-contracts. The Director shall closely monitor the participation of WBEs in construction contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)2.

(B) For all public works/construction contracts, the contract awarding authority shall furnish the Director with an informational copy of all bid conditions and requests for proposals, along with a statement identifying all funds provided by any other governmental agency which will be used in payment of the contract.

(C) Architect and engineer services provided to the City in connection with a public works/construction contract are governed by Section 12D.11.

(D) MBE/WBE Subcontracting Program. For all public works/construction contracts in which the contract awarding authority reasonably anticipates will include subcontractor participation, the contract awarding authority, prior to the solicitation of bids, shall provide the Director with a proposed job scope, and may submit written recommendations to the Director regarding MBE and WBE subcontractor participation goals to be set for the contract. The Director shall set the participation goals pursuant to Section 12D.9.(D)-(1).

(D)-(1) Upon receipt of a proposed job scope and/or a written recommendation from a contracting awarding authority pursuant to Section 12D.9.(D), the Director shall set the MBE and WBE participation goals for each construction contract based upon the following factors:

1. The extent of subcontracting opportunities presented by the contract;
2. The availability of MBE/WBE subcontractors capable of providing goods and services on the construction contract.

The Director shall set the MBE and WBE participation goals within 10 working days of the date the Director receives from a contract awarding authority a proposed job scope and/or written recommendation. If the Director fails to act within 10 days, and if the contract awarding authority submitted to the Director recommended goals pursuant to Section 12D.9.(D), the recommended goals shall be deemed approved by the Director, provided that the recommended goals are based upon the factors identified in Subsections (D)-(1) 1 and 2 above.

(D)-(2) Bid conditions shall require bidders on prime construction contracts to do the following:

1. Demonstrate in their bid that they have used good-faith efforts to utilize MBE and WBE subcontractors;
2. Identify the particular MBEs and WBEs subcontractors to be utilized in performing the contract, specifying for each the dollar value of the participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the bid.

Except as provided in Section 12D.9.(D)-(5), bids not meeting the requirements of Section 12D.9.(D)-(2) shall be declared non-responsive.

(D)-(3) A contract awarding authority may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on construction contracts by submitting the reasons therefor in writing to the Director prior to the solicitation of bids.

(D)-(4) A bidder or contractor may request that the Director waive or reduce the amount of MBE or WBE subcontractor participation goals on a construction contract by submitting the reasons therefor in writing to the contract awarding authority with its bid.

(D)-(5) The Director may grant the request for waiver or reduction made pursuant to Sections 12D.9.(D)-(3) and (D)-(4) upon a determination that:

1. The reasonable and necessary requirements of the construction contract render subcontracting or the participation of businesses other than bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the goods or services required by the contract are unavailable, despite the prime contractor's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(D)-(6) Whenever the Director denies a contractor's request to waive or reduce the participation goals, the contractor may appeal that denial to the Subcontracting Goals Committee established pursuant to Section 12D.8(A)4. The Subcontracting Goals Committee's decision on the request shall be final. In reviewing the Director's denial of a contractor's request to waive or reduce participation goals, the Subcontracting Goals Committee shall consider the extent of subcontracting opportunities presented by the contract and the availability of MBE/WBE subcontractors capable of providing goods and services on the construction contract.

The Subcontracting Goals Committee may overrule the Director and grant the request for waiver or reduction only upon finding that:

1. The reasonable and necessary requirements of the construction contract render subcontracting or the participation of businesses other than bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the goods or services required by the contract are unavailable, despite the prime contractor's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(D)-(7) Prior to entering into any prime construction contract, the contract awarding authority shall require bidders on the contracts to contact all MBEs and WBEs before the MBE/WBEs are listed as subcontractors in the bid.

(D)-(8) During the term of the contract, any failure to comply with the level of MBE and WBE subcontractor participation specified in the contract shall be deemed a material breach of contract. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92; Ord. 210-97, App. 5/30/97; Ord. 457-97, App. 12/15/97; Ord. 82-98, App. 3/6/98; Ord. 186-98, App. 6/5/98; Ord. 256-98, App. 7/31/98)

SEC. 12D.10. ADDITIONAL FINDINGS SUPPORTING RACE- AND GENDER-CONSCIOUS BID PREFERENCES—PURCHASING CONTRACTS.

(A) In addition to the general findings set forth in Sections 12D.2, 12D.2-1, 12D.2-2, 12D.2-3, 12D.2-4, 12D.2-5 and 12D.2-6 and based upon the record before this Board, the Board hereby makes these additional findings in support of the race- and gender-conscious bid preferences for purchasing contracts:

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices in the award of purchasing contracts.

2. The evidence before this Board relating to the award of contracts for fiscal year 1987-1988 reflects that MBEs (each ethnic group listed as a minority) and WBEs continue to be awarded contract dollars in certain categories of

purchasing contracts in dollar amounts that are disproportionately lower than the available number of MBEs and WBEs in the private sector. These results cannot be attributed to chance. In light of the testimony before this Board and the Commission in 1983, 1984, 1988 and 1989, this Board finds that these results can only be attributed to discriminatory procurement practices.

3. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for the aforementioned purchasing contracts.

4. Race-neutral measures employed by the City in the past for those purchasing contracts subject to the "lowest, reliable, responsible bidder" standard did not prevent the discriminatory practices from occurring.

5. The Board is granting a competitive advantage, the bid preference, to MBEs and WBEs to offset the identified competitive disadvantage caused by the City's discriminatory procurement practices.

6. The evidence before this Board relating to the award of purchasing contracts for fiscal years 1989-1990 and 1990-1991 reflects that certain minority groups have improved their participation in City purchasing contracts. However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary to enable these groups to overcome past discrimination in the award of purchasing contracts. The Director shall closely monitor the participation of these groups in purchasing contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)(2).

(B) Equipment and supplies contracts or general services contracts as defined herein awarded by the purchaser shall be subject to the race- and gender-conscious bid preferences of this ordinance.

(C) In addition to the duties given the purchaser elsewhere, the purchaser shall maintain, with the assistance of the Director, a current list of Minority and Woman Business Enterprises certified by the Commission to provide each of

those commodities or services subject to this ordinance which the purchaser indicates are required by the City. The purchaser shall notify the Director prior to solicitation of bids or quotations whenever no such certified businesses are available for a contract subject to the race- and gender-conscious bid preferences of this ordinance, unless the Director waives such notification based on the known unavailability of such qualified businesses to perform a particular contract. The Director shall attempt to identify qualified businesses, and if successful, shall notify the purchaser of their availability; the purchaser shall provide such MBEs and WBEs every practical opportunity to submit bids or quotations.

(D) The purchaser shall also maintain a central office where all bids, requests for proposals and solicitations will be listed and kept current. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 155-92, 5/29/92; Ord. 210-97, App. 5/30/97; Ord. 457-97, App. 12/15/97; Ord. 82-98, App. 3/6/98; Ord. 186-98, App. 6/5/98; Ord. 256-98, App. 7/31/98)

SEC. 12D.11. ADDITIONAL FINDINGS SUPPORTING THE RACE- AND GENDER-CONSCIOUS BID PREFERENCES—CONSULTANTS AND PROFESSIONAL SERVICES.

(A) In addition to the general findings set forth in Sections 12D.2, 12D.2-1, 12D.2-2, 12D.2-3, 12D.2-4, 12D.2-5 and 12D.2-6 and based upon the record before this Board, the Board hereby makes additional findings in support of the race- and gender-conscious bid preferences for the following specifically enumerated professional services contracts:

Legal, architect and engineer, computer systems, management consulting, medical services.

1. In Ordinance No. 139-84 this Board identified discriminatory procurement practices against MBEs and WBEs in the award of prime professional services contracts.

2. The evidence before this Board relating to the award of prime legal services contracts for fiscal year 1987-1988 reflects that Black law

firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black law firms willing and able to perform legal services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

The statistical evidence before this Board reflects that there are few Asian, Black, Latino and woman owned law firms certified by the Director to provide legal services to the City. An April 1988 San Francisco Bar Association study concludes that there is significant disparity between equally qualified white and minority lawyers in terms of income, current employment positions, hiring, promotion and retention in San Francisco. The study also concludes that a high percentage of white and minority lawyers believe that racial discrimination plays a role in the employment practices of San Francisco legal employers. The report of the Judicial Council Advisory Committee on Gender Bias in the Courts on Civil Litigation and Courtroom Demeanor concludes, among other points, that opportunities for advancement and promotion in the legal profession appear less available to women than to men. In view of these studies, the Board finds that minority lawyers are excluded from employment opportunities due to discriminatory employment practices in San Francisco and that women lawyers are excluded from employment opportunities due to discriminatory practices in California. These employment practices prevent minority and women lawyers from gaining the necessary experience that would enable minority and women lawyers to compete for City legal services contracts. The City in its award of legal services contracts will become a passive participant in those practices.

The City is granting Asian, Black, Latino and woman owned law firms a bid preference pursuant to Section 12D.8.(B)2 to encourage majority law firms to joint venture with these minority and woman owned law firms when competing for the award of City contracts for legal services. Department shall also grant a seven and one-half percent (7.5%) bid/rating preference to any

majority owned law firm based in San Francisco that enters into an affirmative action program with the Director and agrees to take affirmative action to perform the following: (1) increase the recruitment, hiring, retention and advancement to partnership of minority lawyers within the firm; (2) have minority lawyers within the firm capable of providing the required services included among those who represent the City; (3) maintain and expand existing joint ventures or other formal associations with minority owned law firms, and retain and otherwise enter into joint ventures or other formal associations with minority owned law firms with which the firm does not currently have such a relationship, on legal matters of the law firm clientele calling for such a relationship; (4) request all law firms which serve as associate counsel, co-counsel or local counsel to the firm to adopt in principle these goals; (5) refer conflict of interest situations to minority owned law firms; and (6) take such additional steps as are practicable to foster and enhance relations between the majority firm and minority owned law firms, including but not limited to providing educational and training opportunities in furtherance of the objectives of this Ordinance as it relates to the legal profession. The affirmative action program developed pursuant to this subsection shall be effective for a period of 12 months after the date of agreement in writing by the law firm and the Director or the term of the legal services contract, whichever term is greater.

3. The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1987-1988 reflects that Black and woman owned architectural/engineering firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black and woman owned architectural/engineering firms willing and able to perform these services for the City. The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1989-1990 reflects that Asian owned architectural/engineering firms have been awarded contract dollars in amounts that are disproportionately lower than the available

numbers of Asian owned architectural/engineering firms willing and able to perform these services for the City. Given that Asian owned architectural/engineering firms enjoy a relatively large share of this market, these statistically significant results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

The evidence before this Board relating to the award of prime architect and engineering contracts for fiscal year 1989-90 reflects that Latino owned architectural/engineering firms have not been awarded any contract dollars notwithstanding the available numbers of Latino owned architectural/engineering firms willing and able to perform these services for the City. Based on the statistical and other evidence before this Board, the Board concludes that the lack of participation by Latino owned architectural and engineering firms on prime architectural/engineering contracts cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

4. The evidence before this Board relating to the award of prime computer systems services contracts for fiscal year 1987-1988 reflects that Asian, Black and woman owned computer systems firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Black and woman owned computer systems firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

5. The evidence before this Board relating to the award of prime management consulting services contracts for fiscal year 1987-1988 reflects that Asian, Black and woman owned management consulting firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Black and woman owned management consulting firms willing and able to perform

these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

6. The evidence before this Board relating to the award of prime medical services contracts for fiscal year 1987-1988 reflects that Asian, Latino and woman owned medical services firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Latino and woman owned medical services firms willing and able to perform these services for the City. The evidence before this Board relating to the award of prime medical services contracts for fiscal year 1989-90 reflects that Black owned medical services firms are awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black owned medical services firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

7. The evidence before this Board relating to the award of prime miscellaneous professional services contracts for fiscal year 1989-1990 reflects that Asian, Latino, Black and woman owned firms which provide miscellaneous professional services are awarded contract dollars in amounts that are disproportionately lower than the available numbers of Asian, Latino, Black and woman owned firms willing and able to perform these services for the City. These results cannot be attributed to chance. This Board finds that these results can only be attributed to discriminatory procurement practices.

8. The evidence before this Board supports the conclusion that aforementioned MBEs and WBEs are disadvantaged by discriminatory practices when competing for City prime professional services contracts.

9. The Board is granting a competitive advantage, the bid preference, to the MBEs and WBEs identified as having been subject to the identified competitive disadvantage caused by

the City's discriminatory procurement practices in the award of the aforementioned professional services contracts.

10. The evidence before this Board relating to the award of professional services contracts for fiscal year 1990-1991 reflects that certain minority groups have improved their participation in certain City professional services contracts. However, based on the testimony and other evidence before this Board, the Board concludes that remedial action continues to be necessary to enable these groups to overcome past discrimination in the award of professional services contracts. The Director shall closely monitor the participation of these groups in professional services contracts and report the results of such monitoring to the Board pursuant to Section 12D.6(B)2.

(A)-(1) In addition to the general findings set forth in Section 12D.2 and the findings set forth in 12D.2-2, 12D.2-3, 12D.2-4, 12D.2-5 and 12D.2-6 and 12D.11(A)3, and based upon the record before this Board, the Board hereby makes these additional findings in support of establishing subcontractor participation goals for architectural/engineering contracts:

a. The evidence before this Board relating to the award of architectural and engineering prime contracts and subcontracts for fiscal years 1989-1991 shows that Black, Asian, Latino and woman owned architectural and engineering firms continue to be awarded contract dollars in amounts that are disproportionately lower than the available numbers of Black, Asian, Latino and woman owned architectural and engineering firms willing and able to perform these services for the City. These statistically significant disparities exist despite the fact that Black, Asian, Latino and woman owned firms are entitled to a bid preference on prime architectural and engineering contracts. In light of the testimony before this Board and the Commission in 1983, 1984, 1988, 1989, 1991 and 1992, the San Francisco Redevelopment Agency in 1991, and the San Francisco Unified School District in 1991 and 1992, this Board finds that these results can be attributed in part to discriminatory contracting

practices and in part to discrimination in the local architectural and engineering industries against MBE and WBE architects and engineers. This discrimination is manifested in, and perpetuated and exacerbated by, the City's contracting practices.

b. The evidence before this Board supports the conclusion that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City architectural and engineering contracts, and when competing to provide subcontractor services on City architectural and engineering contracts. The weight of the testimony and other evidence before this Board supports the conclusion that nonminority architects and engineers competing for or doing business with the City and/or in the private sector limit the participation of MBE and WBE subcontractors on architectural and engineering contracts by engaging in discriminatory business practices.

c. Race-neutral measures employed by the City in the past did not prevent the discriminatory practices from occurring. Since February 1989 the City has pursued race-neutral measures to facilitate MBE/WBE subcontractor participation in architectural and engineering contracts. From about February 1st to June 30, 1989 the City adopted a race-neutral disadvantaged business program for its architectural and engineering contracts. Since July 1, 1989 the City has urged prime architects and engineers to voluntarily extend subcontracting opportunities to MBE/WBE subcontractors on City architectural and engineering contracts. These race- and gender-neutral measures employed by the City have not been successful in increasing MBE/WBE participation in City architectural and engineering contracts.

(A)-(2) MBE/WBE Subcontracting Program. For all architectural and engineering contracts which the contract awarding authority reasonably anticipates will include subcontractor participation involving architectural/engineering and related services, the contract awarding authority, prior to requesting proposals, shall provide the Director with a proposed job scope, and may

submit written recommendations to the Director regarding MBE and WBE subcontractor participation goals to be set for the contract. The Director shall set the participation goals pursuant to Section 12D.11(A)-(3).

(A)-(3) Upon receipt of a proposed job scope and/or a written recommendation from a contract awarding authority pursuant to Section 12D.11(A)-(2), the Director, shall set the MBE and WBE participation goals for each architectural and engineering contract based on the following factors:

1. The extent of subcontracting opportunities presented by the contract for architectural/engineering and related services;
2. The availability of MBE/WBE subcontractors capable of providing such services on the contract.

The Director shall set the MBE and WBE participation goals within 10 working days of the date the Director receives from a contract awarding authority a proposed job scope and/or written recommendation. If the Director fails to act within 10 days, and if the contract awarding authority submitted to the Director recommended goals pursuant to 12D.11(A)-(2), the recommended goals shall be deemed approved by the Director, provided that the recommended goals are based upon the factors identified in this subsection.

(A)-(4) Requests for proposals shall require bidders on architectural and engineering contracts to do the following:

1. Demonstrate in their proposal that they have used good-faith efforts to utilize MBE and WBE subcontractors;
2. Identify the particular MBE and WBE subcontractors (which may include lower-tier MBE and WBE subcontractors) to be utilized in performing the contract, specifying for each the dollar value of participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the proposal.

Except as provided in Section 12D.11(A)-(7), proposals not meeting the requirements of Section 12D.11(A)-(4) shall be declared nonresponsive.

(A)-(5) A contract awarding authority may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on architectural and engineering contracts by submitting the reasons therefor in writing to the Director prior to requesting proposals.

(A)-(6) A bidder may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on an architectural or engineering contract by submitting the reasons therefor in writing to the contract awarding authority with its bid.

(A)-(7) The Director may grant the request for waiver or reduction made pursuant to Sections 12D.11(A)-(5) and (A)-(6) upon a determination that:

1. The reasonable and necessary requirements of the architectural or engineering contract render subcontracting or the participation of businesses other than the bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the services required by the contract are unavailable, despite the bidder's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(A)-(8) Whenever the Director denies a bidder's request to waive or reduce the participation goals, the bidder may appeal that denial to the Subcontracting Goals Committee established pursuant to Section 12D.8(A)4. The Subcontracting Goals Committee's decision on the request shall be final. In reviewing the Director's denial of a bidder's request to waive or reduce participation goals, the Subcontracting Goals Committee shall consider the extent of subcontracting opportunities presented by the contract and the availability of MBE/WBE subcontractors capable of providing services on the contract.

The Subcontracting Goals Committee may overrule the Director and grant the request for waiver or reduction only upon finding that:

1. The reasonable and necessary requirements of the contract render subcontracting or the participation of businesses other than bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the services required by the contract are unavailable, despite the bidder's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes which are unreasonably high in that they exceed competitive levels beyond amounts which can be attributed to cover costs inflated by the present effects of discrimination.

(A)-(9) The contract awarding authority shall require bidders on architectural and engineering contracts to contact all MBEs and WBEs listed as subcontractors in proposals before listing such MBEs and WBEs.

(A)-(10) During the term of the contract, any failure to comply with the level of MBE and WBE subcontractor participation specified in the contract shall be deemed a material breach of contract.

(A)-(11) In implementing this subcontracting program, the Director may encourage contract awarding authorities and prime contractors to take into consideration when recruiting subcontractors the degree of underutilization of MBEs and WBEs within the specific industries or subindustries called for by the contract.

(B) For all professional services contracts as defined herein, the contract awarding authority or the department making the contract award recommendation shall furnish the Director with an informational copy of all bid conditions and requests for proposals, if any, along with a statement identifying all funds provided by any other governmental agency which will be used in payment of the contract. Prior to solicitation of bids or proposals, the Director may make recommendations to the contract awarding authority with respect to provisions pertaining to MBE and WBE participation.

(C) Professional services contracts, the estimated cost of which exceeds \$10,000, shall be awarded and administered in accordance with the following standards and procedures:

1. The contract awarding authority or the department making the contract award recommendation shall use good-faith efforts to solicit bids or proposals from MBEs and WBEs certified to provide the specified services. MBEs and WBEs shall be provided every practical opportunity to submit bids or proposals;

2. City departments shall include amongst consultant selection panelists individuals who are women and minorities;

3. All consultant selection panels and awarding officers shall apply the bid/rating preferences to each stage of the selection process, e.g., qualifications, proposals and interviews. Each evaluator shall score each consultant on a point system based on a predetermined evaluation criteria and predetermined point value. The selection criteria shall be based solely on objective factors that are related to the ability of the contractor to perform the proposed project. The bid/rating preference shall be applied to the score attained by the MBE, WBE, and/or LBE as set forth in this ordinance. If the highest score is attained by a MBE or WBE, the department shall enter into good-faith negotiations with that consultant. Subject to the prior approval of the Director and upon a showing that those negotiations were undertaken in good faith with the aforementioned MBE or WBE consultant, a department may award the contract to another competing consultant.

4. The Director is empowered to take actions as are designed to ensure compliance with the provisions of this Section, which shall include, but are not limited to:

(a) Order the suspension of the selection process;

(b) Intervene in the selection process to correct contracting practices which hinder equal business opportunities for MBEs and WBEs. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 344-91, App. 9/19/91; Ord. 155-92, App. 5/29/92; Ord. 284-92, App. 9/16/92; Ord. 210-97, App. 5/30/97; Ord. 457-97, App. 12/15/97; Ord. 82-98, App. 3/6/98; Ord. 186-98, App. 6/5/98; Ord. 256-98, App. 7/31/98)

SEC. 12D.12. GOOD-FAITH EFFORTS REQUIRED FOR OTHER CONTRACTS.

(A) All City and County departments, commissions, boards, officers and employees, in the deposit of City funds and performance of their other official duties, and in the award of leases, franchises, concessions, and contracts not subject to the race- and gender-conscious bid preferences of this ordinance shall make every good-faith effort to use the services of Minority Business Enterprises and Women Business Enterprises. Such services shall include, but are not limited to, the financial services of banks, savings and loan companies and other commercial financial institutions, arrangement of travel and accommodations when traveling on official City business and such other services needed by City departments. Commissions and boards shall submit to the Director on an annual basis a written report on the efforts made pursuant to this Subsection.

(B) The City Treasurer, the Controller, the Health Service System and the Retirement Board shall report annually to the Director, with copies to the Mayor and the Board of Supervisors, their utilization of MBEs and WBEs. (Added by Ord. 175-89, App. 5/30/89; Ord. 278-96, App. 7/3/96)

SEC. 12D.13. EXCEPTIONS AND WAIVERS.

(A) The Director shall waive the race- and gender-conscious bid preferences and good-faith efforts requirements of this ordinance under the following circumstances:

1. Whenever the Director finds, with the advice of the contract awarding authority, that needed goods or services are available only from

a sole source and the prospective contractor is not currently disqualified from doing business with the City, or from doing business with any governmental agency based on a failure to comply with Minority or Women Business Enterprise or contract compliance requirements;

2. If the contract awarding authority certifies in writing to the Director that: (1) pursuant to Administrative Code Section 6.30 the contract is necessary to respond to an emergency which endangers the public health or safety and (2) there is no time to apply the bid preference(s) and no MBEs or WBEs capable of performing the emergency work are immediately available; provided that such certification shall be made prior to the Controller's contract certification.

(B) The Director shall waive the five-percent LBE bid preference for contracts in excess of \$5,000,000 whenever a contract awarding authority establishes that: (1) sufficient qualified Local Business Enterprises capable of providing the needed goods and services required by the contract are unavailable and (2) sufficient qualified businesses located outside of San Francisco capable of providing the needed goods and services required by the contract are available; or (3) the application of the five-percent LBE preference will result in significant additional costs to the City if the waiver of the bid preference is not granted.

(C) Pursuant to Administrative Code Section 6.29-2, the bid preference provisions of this ordinance are not applicable to any contract for the construction, reconstruction or repair of public buildings, streets, utilities or other public work or improvement estimated to cost in excess of \$10,000,000.

(D) Pursuant to Administrative Code Section 21.11-2, the bid preference provisions of this ordinance are not applicable to any contract for the purchase of materials, supplies or equipment estimated to cost in excess of \$10,000,000. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91)

SEC. 12D.14. MONITORING AND COMPLIANCE.

(A) The Director shall monitor the City's progress toward achievement of the goals stated in Section 12D.3 (declaration of policy). The

Director shall issue an exit report for any contract which includes MBE/WBE prime contractor participation as a joint venture partner. The purpose of the exit report is to ensure that MBE/WBEs are actually performing services on joint ventures.

(B) **Noncompliance By Contractors.** In cases where the Director has cause to believe that a contractor acting in good faith has failed to comply with any of the requirements of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE or WBE participation, the Director shall notify the contract awarding authority and shall attempt to resolve the noncompliance through conciliation. If the noncompliance cannot be resolved, the Director shall submit to the Commission and the contractor a written Finding of Noncompliance. The Human Rights Commission shall give the contractor an opportunity to appeal the Finding, and if the Commission concurs with the finding of the Director, it shall take such action as will effectuate the purposes of this ordinance.

(C) **Wilful or Bad Faith Noncompliance by Contractors.** In cases where the Director has cause to believe that any bidder or contractor has wilfully failed to comply with any of the provisions of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE or WBE participation, the Director shall be empowered to conduct an investigation and after affording the contractor notice and an opportunity to be heard, may impose sanctions for each violation of this subsection. Such sanctions shall include but are not limited to:

(a) Declare the bidder or contractor non-responsive and ineligible to receive the award of the contract;

(b) Declare the bidder or contractor an irresponsible bidder and disqualify the bidder or contractor from eligibility for providing goods or services to the City and County for a period of five years, with a right of review and reconsid-

eration by the Commission after two years upon a showing of corrective action indicating violations are not likely to reoccur;

(c) If the bidder or contractor is a MBE, WBE and/or LBE, revoke that business' certification as a MBE, WBE and/or LBE;

(d) Determine that the bidder or contractor has wilfully failed to comply with the provisions of this ordinance and pursuant to the provision in the contract contemplated by Section 12D.8(E)3 of the ordinance, calculate the liquidated damages for which the bidder or contractor shall be liable.

Thereafter the Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City department officials overseeing any contract with the bidder or contractor that a determination of a bad-faith compliance has been made and that all payments due the bidder or contractor shall be withheld as agreed to by the bidder or contractor and the City pursuant to Section 12D.8(E)3.

In addition, the Director shall transmit to the Bureau of Delinquent Revenues a report of the determination of liability and ask the Bureau of Delinquent Revenues to coordinate efforts with the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

The bidder or contractor may appeal the Director's decision to the Human Rights Commission, which may sustain, reverse or modify the Director's findings and sanctions imposed or take such other action as will effectuate the purposes of this ordinance.

An appeal by a contractor under this subsection shall not stay the Director's findings.

(D) The Director may require such reports, information and documentation from contractors, bidders, contract awarding authorities and the head of any department, division, or office of the City as are reasonably necessary to determine compliance with the requirements of this ordinance.

(E) **Noncompliance by City Departments.** Whenever the Director finds after investigation that a contract awarding authority has

wilfully failed to comply with the provisions of this ordinance, a written Finding of Noncompliance specifying the nature of the noncompliance shall be transmitted to the contract awarding authority, the Commission, the Mayor and Board of Supervisors; and

The Director shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the Finding of Noncompliance along with a finding that conciliation was attempted and failed to the Commission which shall notify the contract awarding agency to take appropriate action to secure compliance.

The Finding of Noncompliance shall be communicated to the Mayor and the Board of Supervisors.

(F) If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed with the City any materially false or misleading statement or report made in connection with this ordinance, the Director shall report that information to the City Attorney or the District Attorney for appropriate action. The Director shall be empowered to conduct an investigation and for each violation of this subsection, 12D.14(F), to impose sanctions as set forth in Section 12D.14(C). (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 278-96, App. 7/3/96)

SEC. 12D.15. REPORTING AND REVIEW; EXTENSION.

(A) **Reporting by Departments.** By December 31st of each fiscal year all contract awarding authorities and departments shall report annually to the Mayor on their progress in the preceding fiscal year toward achievement of the MBE and WBE participation goals.

(B) **Reporting by the Director.**

1. The Director shall report quarterly to the Commission and the Board of Supervisors whether the goals stated in Section 12D.3 have been met in whole or in part.

2. The Director shall report to the Commission all waivers acted upon pursuant to Section 12D.13. Such report shall be made at the first Commission meeting following the granting of the waiver.

(C) **Reporting by the Commission.** By March 1st of each fiscal year subject to this ordinance, the Commission shall submit an annual report to the Mayor and the Board of Supervisors on the progress of the City toward the goals stated in Section 12D.3 of this ordinance, together with an identification of problems and specific recommendations for: (1) discontinuing the race- or gender-conscious bid preferences in those cases where the bid preferences have remedied the identified discrimination against MBEs and WBEs; and (2) improving the City's performance in remedying the identified discrimination against MBEs and WBEs.

(D) The Board of Supervisors shall act upon the Commission's recommendations by the third Board meeting of May in each fiscal year subject to this ordinance.

(E) **Review by the Commission.** This ordinance shall expire June 30, 1997 unless the Commission, after conducting public hearings, finds that the purposes identified in Section 12D.3 have not yet been achieved, in which case it shall certify said finding to the Board of Supervisors no later than 120 days prior to the expiration date. Thereafter the Board of Supervisors may extend the ordinance for additional three-year periods.

(F) **Review by the Contract Review Committee.** The Contract Review Committee established pursuant to Section 12D.8(A)3 shall have the following powers and duties:

1. To review contracts referred to it by the Director or a department for determining whether the contract should be set aside, where competition for the contract is limited to MBEs, WBEs and/or joint ventures with MBE/WBEs;

2. Before approving a set aside of a contract, the Contract Review Committee shall first determine that: (1) the department seeking or affected by the set-aside has complied with all of the requirements of Section 12D.8(B); and (2)

there are at least three business enterprises which are certified or eligible for certification as a MBE or WBE which can compete for the contract set aside.

3. After making the findings required by Section 12D.15(F)2, the Contract Review Committee may approve that a contract be set aside. However, the Contract Review Committee shall first consider the feasibility of approving a set-aside where competition is limited to joint ventures with MBE and/or WBE participation which equals or exceeds 35 percent. The Contract Review Committee shall issue its findings and approval in writing to the department affected by the set-aside.

(G) **Extension.** Pursuant to Section 12D.15(E) of Ordinance 155-92, as amended by Ordinances 210-97, 457-97, 82-98 and 186-98 and based upon the Further Additional Findings Supporting Six-Month Extension of MBE/WBE/LBE Ordinance—III set forth in Section 12D.2-2, the Further Additional Findings Supporting a Three-Month Extension of MBE/WBE/LBE Ordinance—III as set forth in Section 12D.2-3, Further Additional Findings Supporting a Three-Month Extension of MBE/WBE/LBE Ordinance—III as set forth in Section 12D.2-4, Further Additional Findings Supporting a Two-Month Extension of MBE/WBE/LBE Ordinance—III as set forth in Section 12D.2-5, and Additional Findings Supporting a Two-Month Extension of the MBE/WBE/LBE Ordinance as set forth in Section 12D.2-6, the Board hereby extends Ordinance 155-92, as amended, to October 31, 1998. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 155-92, App. 5/29/92; Ord. 278-96, App. 7/3/96; Ord. 210-97, App. 5/30/97; Ord. 457-97, App. 12/15/97; Ord. 82-98, App. 3/6/98; Ord. 186-98, App. 6/5/98; Ord. 256-98, App. 7/31/98)

SEC. 12D.16. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, as amended, to every department, agency, commission and contract awarding authority in the City and County of

San Francisco. Each appointing officer of the City shall inform all employees under his or her jurisdiction of the provisions of this ordinance and of the duty of all of his or her employees to comply with the provisions of this ordinance. Each appointing officer shall also inform employees that if the employee fails to comply with the requirements of this ordinance the employee shall be subject to appropriate disciplinary action.

The Clerk of the Board of Supervisors shall also inform every department, agency, commission and contract awarding authority that whenever in accordance with the provisions of the Charter or of the Administrative Code a proposed ordinance, resolution, contract, lease, franchise, license, or other agreement or transaction is submitted to this Board for its adoption or approval, it shall be the policy of this Board to adopt legislation or approve those agreements or transactions where the department first has demonstrated in writing to this Board that the department has engaged in good-faith efforts to include the participation of MBEs and WBEs in the department's procurement and contract award practices. (Added by Ord. 190-91, App. 5/31/91)

SEC. 12D.17. IMPLEMENTING REGULATIONS.

Not later than 30 days after the enactment of this ordinance, the Commission shall adopt amendments to the rules, regulations and procedures it adopted and publicly promulgated pursuant to Ordinance 175-89. The Commission shall afford the public and City departments the opportunity to provide input to and comment on the amendments to the regulations prior to their formal adoption. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91)

SEC. 12D.18. SEVERABILITY.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its

application to other persons or circumstances. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91)

SEC. 12D.19. EFFECTIVE DATE.

This ordinance shall take effect on July 1, 1992, and shall govern all contracts for which a bid has not been solicited by the effective date. (Added by Ord. 175-89, App. 5/30/89; amended by Ord. 190-91, App. 5/31/91; Ord. 76-92, App. 3/13/92; Ord. 155-92, App. 5/29/92)

PROVISIONS EFFECTIVE FOR CONTRACTS SOLICITED ON OR AFTER NOVEMBER 1, 1998

SEC. 12D.A.1. SHORT TITLE.

This ordinance shall be entitled the "Minority/Women/Local Business Utilization Ordinance" and may be cited as the "MBE/WBE/LBE Ordinance-V." (Added by Ord. 296-98, App. 10/5/98; Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.2. GENERAL FINDINGS.

This Board initially passed Ordinance No. 139-84 on April 2, 1984 to combat the City and County of San Francisco's own active and passive participation in discrimination against minority- and women-owned businesses, both in its own contracting for goods and services and in the private market for such goods and services. At the time of passage, women- and minority-owned businesses were virtually excluded as contractors on prime City contracts. The ordinance also sought to offset economic disadvantages faced by local businesses that are not shared by nonlocal businesses, and to increase employment in the City and County of San Francisco by encouraging the participation of local business enterprises in City contracting.

Since that time, this Board and the City's Human Rights Commission have actively and extensively documented and studied discrimination against and disadvantages faced by these groups to gauge the effectiveness of the prior Minority, Women and Local Business Enterprise

Ordinances (the "M/W/LBE Ordinances") and to assess the need for further and continuing action.

The earlier studies are documented in the legislative history of the previous amendments and re-enactments of the ordinance, including Ordinance Nos. 175-89, 155-92, 210-97, 457-97, 82-98, 296-98, 210-99 and 283-99. The 1989 Ordinance was challenged in federal court and upheld by the Ninth Circuit Court of Appeals. See *Associated General Contractors of California v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991).

The findings underlying the 1984 and 1989 ordinances have been reviewed and analyzed in the preparation of the current ordinance and are hereby incorporated by reference into the legislative history of this ordinance. These materials, prepared up to and including May 1989, include disparity studies, transcripts of live testimony by dozens of witnesses, case studies of discrimination, and voluminous other materials. An index and a separate synopsis of this material are on file with the Clerk of this Board in File No. 98-0612.

Since 1989, the City has devoted substantial additional resources to the task of understanding and documenting discrimination against women and minorities in awarding City contracts and in the private market for such contracts. Given the prior findings of discrimination and the need for this ordinance, this Board examined whether the identified discrimination had been eradicated.

Between 1989 and 1998, together this Board and the Human Rights Commission held 14 hearings on the subject of women- and minority-owned business enterprises, heard live testimony from 254 witnesses, reviewed videotaped oral histories by numerous witnesses, reviewed many volumes of social science materials, three disparity studies undertaken by the City and County of San Francisco and numerous other relevant statistical disparity studies undertaken by the City agencies and various other groups and governments from around the Bay Area. The Board also reviewed case studies and other sta-

tistical information gathered by the Human Rights Commission. These materials are all incorporated by reference into the legislative history of this ordinance and are in file with the Clerk of this Board in File No. 98-0612.

In its hearings on the MBE/WBE/LBE ordinance between 1989 and 1998, this Board gave close consideration to the need for adding Native Americans and Arab Americans to the list of minority groups covered by the ordinance. As part of this process, the Board and the Human Rights Commission heard or reviewed testimony from 47 individuals concerning discrimination against Arab Americans and Native Americans. In addition, a Mason Tillman Associates study covering City contracting in the years 1992 through 1995 found statistically significant evidence of discrimination against Native Americans and Arab Americans in several categories of contracting. That study also closely reviewed testimonial evidence of discrimination against these groups.

In 1997 and 1998, this Board and the Human Rights Commission held eight public hearings at which testimony was given by 170 individuals concerning discrimination against Minority and Women Business Enterprises, the transcripts of which, the written submittals accompanying same, and other evidence that was before the Board are in file with the Clerk of this Board in Board File No. 98-0612.

On January 4, 1999 and June 30, 1999, the Human Rights Commission issued reports regarding discrimination in City contracting against Iranian Americans. Those reports recounted testimony from HRC hearings regarding discrimination against Iranian American contractors.

In addition, the Board considered and reviewed oral histories from many persons involved in the bidding and compliance process taken in the summer of 1998. Many of the oral histories have been preserved on video tape. These oral histories recount personal incidents of discrimination as well as compliance difficulties. The oral histories were taken in this manner because many of the individuals were fearful of retaliation and further discrimination if they

testified at a public forum. In fact, this fear caused some of the oral histories to be given in a manner in which the identities of those testifying were not identified. An index and a separate synopsis of the oral histories are on file with the Clerk of this Board in File Nos. 98-0612, 99-0266 and 99-1326.

The findings and evidence underlying the 1998 ordinance and the subsequent amendments to that ordinance have been reviewed and analyzed in the preparation of the current ordinance and are hereby incorporated by reference into the legislative history of this ordinance.

In 2002 and 2003, this Board and the Human Rights Commission held additional public hearings to determine the extent to which the remedies provided by this Ordinance continue to be necessary. At these hearings, 134 individuals and organizations testified about the discrimination minorities and women continue to face in City contracting and in obtaining contracts in the Bay Area that are not subject to affirmative action programs. Additionally, in 2002 and 2003, the Human Rights Commission and this Board received written statements of individuals describing the discrimination minorities and women continue to experience in City contracting and in other contracting in the Bay Area. In December 2001, the Human Rights Commission issued a report entitled "Violence in Our City: Research and Recommendations to Empower Our Community" regarding increasing violence and discrimination against African Americans in San Francisco.

In September 2002, the Human Rights Commission issued a report entitled "Blacklash, Violence, Human Rights Violations & Discrimination in San Francisco in the Wake of September 11, 2001." The report found that the bombing of the World Trade Center and Pentagon on September 11, 2001 have led to a significant increase in San Francisco in discrimination and violence against those who are perceived to have Middle Eastern ancestry.

In April 2003, the Human Rights Commission conducted a disparity analysis of the utilization of minority-owned businesses and women-

owned businesses in prime contracting and subcontracting. Even with the remedial programs set forth in this Ordinance in place, the study shows statistically significant underutilization of minorities and women in most City contracting programs.

But as the Tenth Circuit Court of Appeals recently recognized in upholding the City and County of Denver's remedial contracting program in *Concrete Works of Colorado, Inc. v. City and County of Denver* (10th Cir. 2003) 321 F.3d 950, a public entity cannot reliably ascertain whether a remedial race- and gender-conscious affirmative action contracting program that has been in place should be continued based on a disparity analysis of the utilization of minority- and women-owned businesses in the public entity's contracting programs. That the remedial program in place has given some minorities and women contracting opportunities in certain limited industries provides little evidence of whether minorities and women would be given those opportunities in the absence of the remedial program. Instead, the Tenth Circuit concluded that disparities in private markets in the region provide a strong indicator of the extent to which minorities and women would be used in public entity's contracting programs absent the remedial affirmative action program.

Accordingly, the Human Rights Commission retained the National Economic Research Associates (NERA)—the same firm whose studies about discrimination in the Denver metropolitan area the Tenth Circuit found to be so persuasive—to conduct studies to assess the level of discrimination against minority- and women-owned businesses in the Bay Area private sector. NERA examined business formation and earnings rates, and NERA found significant disparities in the formation and earnings rates of minorities and women as compared to majority men. These disparities are especially pronounced for African Americans and Latino Americans. NERA also examined the market for credit and capital and found strong evidence of discrimination against minorities, as well as evidence of recent discrimination against women. Consistent with the Tenth Circuit's ruling, NERA con-

cluded that the evidence of discrimination it found in Bay Area private markets is a valid substitute for evidence of actual discrimination in City contracting programs.

In April 2003, the Human Rights Commission also retained Godbe Research to conduct a telephone survey of minority- and women-owned businesses certified with the HRC. Twenty-one percent of the 266 firms surveyed reported that since 1998 they have been declined Bay Area subcontracting work that was not subject to affirmative action requirements by prime contractors who typically do award them work on contracts that are subject to the remedial subcontracting requirements of this Ordinance. And each of those firms that experienced such discrimination reported that it had been rejected as a subcontractor by a prime contractor who gave it work on City contracts on average 13 times in the last five years.

Additionally, the Board has reviewed studies undertaken by various public entities in the Bay Area, and testimony, articles and studies prepared by academicians. All of these materials are incorporated by reference into the legislative history of this Ordinance. The collection and analysis of relevant information is ongoing.

As a result of these hearings and review of these materials and the materials archived by the Human Rights Commission and the relevant statistical and social science data, oral histories, articles and studies, the Board makes the following findings:

1. In April 2003, NERA conducted studies to assess the level of discrimination against minority- and women-owned businesses in the Bay Area private sector. NERA examined business formation rates, earnings rates, and disparities in the market for credit and capital.

- NERA reported significant disparities in the formation rates of minority- and women-owned business as compared to businesses owned by Caucasian men. In particular, African Americans, Asian Americans, Latino Americans, and women have statistically significantly lower business formation rates in the Bay Area than do comparable Caucasian men in the construction,

architectural and engineering, professional services, general services and goods and services industries. These disparities are especially large in the construction industry, where, for example, business formation rates for African-Americans are approximately 12 percentage points lower than for comparable Caucasian men. Further, NERA found that the disparities for African Americans and Latino Americans are especially pronounced and have increased in the recent six years over the prior fourteen years.

- NERA further reported significant disparities in the earnings of self-employed minorities and women compared to the earnings of self-employed Caucasian men. The disparity in earnings between self-employed African Americans and self-employed Caucasians, for example, has increased dramatically from 1991-2002 over the prior 13 years, and is much greater than the disparity between African American wage and salary workers and Caucasian wage and salary workers over the same time period.

- NERA also reported discrimination against minorities and women in the credit markets in all industries, which NERA concluded partially explains the large disparities found in minority- and women-owned business formation rates. NERA reported that even when controlling for firm size, credit history and other valid credit worthiness factors, the loan applications of minority-owned firms were substantially more likely to be denied than the loan applications of Caucasian firms. For example, the loan rejection rates for African American and Latino American firms are roughly twice that of Caucasian firms. NERA also found that minority firms are more likely not to apply for loans because of the low loan approval rate for such firms, and that when minority businesses did receive loans, they had to pay higher interest rates, regardless of their credit worthiness or geography. NERA further reported that credit market conditions are a far bigger concern for minority-owned firms than for Caucasian-owned firms, and that a greater share of minority-owned firms than Caucasian-owned firms believe that credit availability is the most important issue likely to confront the firm in the next 12 months. NERA also reported that dis-

crimination in the market for credit has increased for minority groups during the 1990s, and re-appeared for women in the late 1990s.

Based on NERA's studies, the testimony and all of the other evidence before the Board, the Board finds that minority- and women-owned businesses continue to face systemic race and gender discrimination in public and private markets in the Bay Area.

2. In April 2003, the City conducted a comprehensive disparity study to gauge discrimination against women- and minority-owned businesses in the City's contracting from 1998 to early 2003. Under a fair and equitable system of awarding contracts, the proportion of contract dollars awarded to minority- and women-owned business enterprises would be equal to the proportion of willing and able minority- and women-owned enterprises in the relevant market area. If, based on statistical testing, there is a very low probability of attributing to chance the existence of a disparity between these proportions, the Supreme Court has stated that an inference of discrimination can be made.

3. The Human Rights Commission's 2003-study thoroughly and conclusively documented the fact that—even with the City's remedial contracting programs in place—minority- and women-owned business enterprises continue to receive a smaller share of certain types of contracts for the purchases of goods and services by the City than would be expected based on the number of able and available women- and minority-owned businesses. This poor utilization cannot be attributed to chance. This Board finds, based on these statistical studies, testimony and on all the other evidence of persistent discrimination presented to the Board, that the disproportionately small share of City contracting and subcontracting that goes to women- and minority-owned businesses in certain industries is due to discrimination by the City and discrimination in the private market.

4. The Human Rights Commission's April 2003 study also documents that in the last five years, in certain limited industries, some minority groups and women have received City con-

tract dollars close to or above the level that would be expected based on their availability. Based on the studies and reports issued by NERA and Godbe Associates, the testimonial evidence, the history of discrimination against minority and women contractors in City contracting programs and the other materials before the Board, the Board finds that these favorable minority utilization rates are attributable to the fact that the City has remedial contracting programs in place, and that the discrimination the City previously identified in its prime contracting and subcontracting programs has not yet been eradicated. In particular, the Board finds that if the City were to discontinue, at this time, the race- and gender-conscious bid discount program or the subcontracting program authorized by this Ordinance, minority and women utilization rates in City contracting would plummet. Under those circumstances, the Board finds that minority and women utilization rates would likely return to the same judicially-recognized low levels to which they fell in 1989 after the City discontinued its prior race- or gender-conscious remedial contracting programs. In fact, many minorities and women report that they are frequently refused subcontracting opportunities on contracts that are not subject to a race- or gender-conscious affirmative action program by the same prime contractors that do hire them on contracts that are subject to a race- and gender-conscious affirmative action program. And, many minority- and women-owned businesses that have benefited from the City's remedial program and have since graduated from the program, report that prime contractors who gave them subcontracts on contracts subject to the City's subcontracting requirements before they graduated, refuse to give them subcontracts now that they are no longer certified under the M/WBE program.

5. The Human Rights Commission Study reviewed contracts entered into by the City and County of San Francisco in a variety of areas and categories from 1998 through early 2003 and determined the following:

A. For prime construction contracts, even with the race- and gender-conscious bid/ratings discount program in place, African Americans,

Arab Americans, Asian Americans and women still received fewer construction prime-contracting dollars than would be expected given their availability. The disparity was statistically significant for African Americans, Asian Americans and Arab Americans. Although African Americans represent 4.49 percent of the available construction firms, they received only 1.01 percent of the construction contract dollars. Although Arab Americans represent 0.14 percent of the available construction firms, they received no construction contract dollars at all. Although Asian Americans represent 13.74 percent of the available construction firms, they received only 4.98 percent of the construction contract dollars. Although women represent 8.84 percent of the available construction firms, they received only 8.23 percent of the construction contract dollars. Although Caucasian men represent 67.74 percent of available construction firms, they received 70.79 percent of the construction contract dollars. Although Latino American firms received more construction contracts than expected based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against Latino Americans in City contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the City has had in place, Latino Americans would receive well below the level of prime City construction contracts that one would expect based on their availability.

B. For architecture and engineering prime contracts between 1998 and early 2003, even with the race- and gender-conscious bid/ratings discount program in place, African Americans, Arab Americans, Asian Americans, Iranian Americans, Latino Americans, and women received fewer contracts than would be expected given their availability. Notwithstanding the bid/ratings discount program, more than 87 percent of the contracts in this area went to Caucasian male-owned businesses, even though those firms represent less than 63 percent of the available architecture and engineering firms. The disparities against Arab Americans, Asian Americans, Iranian Americans, Latino Americans, and women,

and the particularly pronounced disparity in favor of Caucasian men, were statistically significant.

C. For professional services prime contracts in the years 1998 through early 2003, even with the race-conscious bid/ratings discount program in place, Arab Americans, Iranian Americans and Latino Americans received fewer contracts than expected based on their availability, and the disparities were statistically significant for those groups. Arab Americans, who represent .11 percent of the available professional service firms, received only .08 percent of the professional services contract dollars. Iranian Americans, who represent .11 percent of the available professional services firms, received 0.00 percent of the professional services dollars. Latino Americans, who represent .79 percent of the professional services firms, received .22 percent of the professional service dollars. And, although African Americans, Asian Americans and women received more than the number of professional service contracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against African Americans, Asian Americans and women in City contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the City has had in place, African Americans, Asian Americans and women would receive well below the level of prime City professional service contracts that one would expect based on their availability.

D. For purchases of goods and services prime contracts for 1998 through early 2003, even with the race- and gender-conscious bid/ratings discount in place, Asian Americans, Iranian Americans and women received fewer contract dollars than expected. Although Asian Americans represent 4.15 percent of the available goods and services firms, those firms received only 1.84 percent of the goods and services contract dollars. Similarly, although Iranian Americans represent .22 percent of the available goods and services firms, those firms received only .17 percent of the goods and services contract dollars. Although women represent 6.22 percent of

the available goods and services firms, women received only 4.60 of the goods and services contract dollars. Although African Americans, Arab Americans and Latino Americans received slightly more than the number of good and services contracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against African Americans, Arab Americans and Latino Americans in City contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the City has had in place, African American, Arab American and Latino American firms would receive well below the level of prime City goods and services contracts that one would expect based on their availability.

E. For general services prime contracts for 1998 through early 2003, even with the race- and gender-conscious bid/ratings discount in place, African Americans, Arab Americans, Asian Americans and Iranian Americans received fewer contract dollars than expected based on their availability. Although African Americans represent 1.28 percent of the available general services firms, those firms received only .64 percent of the general services contract dollars. Similarly, although Arab Americans represent .04 percent of the available general services firms, those firms received only .01 percent of the general services contract dollars. Although Asian Americans represent 2.60 percent of the available general service firms, they received only 1.11 percent of the general services contract dollars. Although Iranian Americans represent .09 percent of the general services firms, they received 0.00 percent of the general services contract dollars. The disparities against African Americans and Iranian Americans are statistically significant. Although Latino Americans and women received somewhat more than the number of general services contracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against Latino Americans and women in City contracting and contracting in other Bay Area markets, that in the

absence of the bid/ratings discount program that the City has had in place, Latino Americans and women would receive well below the level of prime City general services contracts that one would expect based on their availability.

F. For telecommunications prime contracts entered into between 1998 and early 2003, even with the race- and gender-conscious bid/ratings discounts in place, African Americans, Asian Americans, Iranian Americans and women received fewer contract dollars than expected based on their availability. Although African Americans represent 2.26 percent of the telecommunications firms, they received only .19 percent of the telecommunications contract dollars. Although Asian Americans represent 13.53 percent of the telecommunications firms they received only 2.93 percent of the telecommunications contract dollars. Although Iranian Americans represent .75 percent of the telecommunications firms, they received .01 percent of the telecommunications contract dollars. Although women represent 14.29 percent of the telecommunications firms, they received only 12.86 percent of the telecommunication contract dollars. Even with the bid/ratings discount program in place, although Caucasian men represent 70.68 percent of the available telecommunications firms, they received 77.56 percent of the telecommunication contract dollars. The disparities against African Americans, Asian Americans and Iranian Americans are statistically significant. Although Latino Americans received more than the number of telecommunication contracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against Latino Americans in City contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the City has had in place, Latino Americans would receive well below the level of prime City telecommunication contracts that one would expect based on their availability.

G. For City construction subcontracts entered into between 1998 and early 2003, even with the race-conscious subcontracting program in place, Arab Americans and Asian Americans

still received fewer construction subcontracts than expected based on their availability. Although Arab Americans represent .14 percent of the available construction firms, they received only .05 percent of the construction subcontract dollars. Although Asian Americans represent 13.74 percent of the construction firms, they received only 12.99 percent of the construction subcontract dollars. Although African Americans, Latino Americans and women received more than the number of construction subcontracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against African Americans, Latino Americans and women in City contracting and contracting in other Bay Area markets, that in the absence of the subcontracting program that the City has had in place, African Americans, Latino Americans and women would receive well below the level of City construction subcontracts that one would expect based on their availability.

H. For City architectural and engineering subcontracts entered into between 1998 and early 2003, even with the race- and gender-conscious subcontracting program in place, African Americans, Arab Americans, Latino Americans and women received fewer architectural and engineering subcontracts than expected based on their availability. Although African Americans represent 4.67 percent of the available architectural and engineering firms, they received only 4.48 percent of the architectural and engineering subcontract dollars. Although Arab Americans represent .98 percent of the architectural and engineering firms, they received only .40 percent of the architectural and engineering subcontract dollars. Although Latino Americans represent 4.18 of the available architectural and engineering firms, they received only 2.51 percent of the architectural and engineering subcontract dollars. Although women represent 12.53 percent of the available architectural and engineering firms, they received only 9.29 percent of the architectural and engineering subcontract dollars. Although Asian Americans and Iranian Americans received slightly more than the number of architectural and engineering subcontracts one would

expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against Asian Americans and Iranian Americans in City contracting and contracting in other Bay Area markets, that in the absence of the subcontracting program that the City has had in place, Asian Americans and Iranian Americans would receive well below the level of City architectural and engineering subcontracts that one would expect based on their availability.

I. For City professional services subcontracts entered into between 1998 and early 2003, even with the race-conscious and gender-conscious subcontracting program in place, Arab Americans Iranian Americans and Latino Americans received fewer professional services subcontracts than expected based on their availability. Arab Americans and Iranian Americans received no professional services subcontracts at all. Although Latino Americans represent .79 percent of the professional services firms, they received only .46 percent of the professional services subcontract dollars. Although African Americans, Asian Americans and women received more than the number of professional service subcontracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against African Americans, Asian Americans and women in City contracting and contracting in other Bay Area markets, that in the absence of the subcontracting program that the City has had in place, African Americans, Asian Americans and women would receive well below the level of City professional services subcontracts that one would expect based on their availability.

J. For City telecommunications subcontracts entered into between 1998 and early 2003, even with the race- and gender-conscious subcontracting program in place, African Americans, Asian Americans, Iranian Americans and women received fewer telecommunications subcontracts than expected based on their availability. Iranian Americans received no telecommunications subcontracts at all. Although Asian Americans represent 13.82 percent of the available telecom-

munications firms, they received only .83 percent of the telecommunications subcontract dollars. Although women represent 13.82 percent of the telecommunications firms, they received only 8.84 percent of the telecommunications subcontract dollars. Although African Americans represent 2.44 percent of the telecommunications firms, they received only 2.22 percent of the telecommunications subcontract dollars. The disparity is statistically significant for Asian Americans. And, even with the subcontracting program in place, although Caucasian men represent less than 70 percent of the telecommunications firms, they received more than 86 percent of the telecommunications subcontracts. Although Latino Americans received somewhat more than the number of telecommunication subcontracts one would expect based on their availability, the Board finds, based on the studies, statistics, testimony and other evidence before it of discrimination against Latino Americans in City contracting and contracting in other Bay Area markets, that in the absence of the bid/ratings discount program that the City has had in place, Latino Americans would receive well below the level of City telecommunications subcontracts that one would expect based on their availability.

6. In 2002 and 2003, the Human Rights Commission and this Board heard testimony from 134 individuals at public hearings about discrimination against minority- and women-owned businesses and received written statements documenting such discrimination. Additionally, in 2003, Godbe Research conducted a telephone survey of HRC-certified MBEs and WBEs.

Based on this evidence, and the findings and evidence supporting the 1984, 1989 and 1998 Ordinances, and amendments to those ordinances, the Board finds that minorities and women continuously face racial prejudice in both the public and private sector markets in San Francisco. The prejudice against minorities takes the form of stereotyping, prejudging, discomfort in working with minorities, an absence of opportunities to prove one's skill and ability, exclusion, networking difficulties, and racial slurs. Women also face prejudging and stereotyping. Women

are often made to feel that they are not qualified to be running a company and that they are innately incapable of certain tasks. Women also sometimes face questions as to whether they are really running their firms. Women- and minority-owned firms also face overt hostility from majority-male firms, reporting harassment, intimidation, and undue pressure during the course of doing business with majority-male firms. Women- and minority-owned businesses also are often subjected to increased and higher standards of review of their work than Caucasian, male-owned firms. Minorities and women also reported difficulties and discrimination in obtaining financing and credit for their firms, difficulty obtaining bonding and insurance, and other forms of business institutional discrimination.

Minorities and women also report of discrimination in the award of City prime contracts. Minorities and women report that project managers in many City Departments continue to operate under an "old boy network in awarding City prime contracts. The practice creates a barrier to the entry of women- and minority-owned businesses and puts those firms at a competitive disadvantage in their efforts to secure City prime contracts.

Minority- and women-owned businesses also reported being discriminated against by prime contractors, by, for example, being given inadequate lead time to bid on projects, being paid late after a bid award, being listed on a bid without permission, and having the scope of their work reduced or canceled after the bid award. Minority- and women-owned businesses report that the only reason they are able to get work from many prime City contractors is because the City requires prime contractors to provide minorities and women with opportunities to compete for City subcontracts. In particular, many minorities and women report that they are frequently refused subcontracting opportunities on contracts that are not subject to a race- or gender-conscious affirmative action program by the same prime contractors that do hire them on contracts that are subject to a race- and gender-conscious affirmative action program. And, many minority- and women-owned businesses that suc-

ceeded because of the City's remedial program, and graduated from the program, report that prime contractors who gave them subcontracts on contracts subject to the City's subcontracting requirements before they graduated, refuse to give them subcontracts now. Finally, minorities and women report of hostility in the industry toward the M/WBE program.

7. In February 1998, the Human Rights Commission issued a report that documents hostility and active resistance to the W/MBE program by various City departments and agencies. The HRC report also found the following discriminatory practices at work in City contracting: (1) listing minority- and women-owned enterprises as subcontractors but never using the listed minority- and women-owned subcontracting firms, (2) the use of additional nonminority, male subcontractors never listed on the relevant HRC forms, and (3) the creation of fraudulent joint ventures involving minority- or women-owned and majority, men-owned firms. In particular, the HRC's investigation found that in at least four out of 86 contracts involving joint ventures, the minority- or women-owned firms listed in the joint venture did not perform any work on the project. A report issued by the HRC in May 2003 reveals that these discriminatory practices continue, and that the HRC has encountered the following additional discriminatory practices in City contracting: (1) attempts by City personnel to improperly influence contract selection panels to ensure that MBEs/WBEs do not obtain City prime contracts; (2) attempts by City personnel to blame MBEs/WBEs unjustifiably for project delays; (3) the imposition of unnecessary minimum requirements on City contracts that act as a barrier to MBEs/WBEs; (4) the failure by City departments to submit draft requests for proposals to HRC with sufficient time to permit the HRC to ensure that adequate MBE/WBE subcontracting goals have been set; (5) attempts by City departments to circumvent the requirements of this ordinance by extending or modifying existing contracts rather than putting new contract out to bid; (6) the failure by City departments to comply with the prompt payment provisions of this ordinance which ensure that MBEs/WBEs

do not suffer unnecessary financial hardships; and (7) resistance by City prime contractors to provide the City with required subcontractor payment information, making it difficult for the City to ensure that MBE/WBE subcontractors receive prompt payment for their work on City contracts.

8. Based on the studies, reports, testimony and other evidence before it, the Board finds that the race- and gender-conscious remedial programs authorized by this Ordinance continue to be necessary to remedy discrimination against minority- and women-owned businesses in City prime contracting and subcontracting. The Board finds that the City and County of San Francisco is actively discriminating against women and minority groups in its contracting, and is passively participating in discrimination in the private sector. This Board finds that the evidence before it establishes that the City's current contracting practices are in violation of federal law and that, as a result, this ordinance continues to be required by federal law to bring the City into compliance with federal civil rights laws in its contracting practices.

9. In addition, the Board has reviewed numerous studies by San Francisco-based agencies. These studies, although narrower in scope than San Francisco's study, support the findings undertaken to assess discrimination against women and minorities in City contracting:

- In 1991, the San Francisco Unified School District undertook a disparity study of its contracting in various categories. The study found "substantial evidence of statistically significant disparities between utilization and availability of minority and women contractors." For prime contracts over \$15,000 in value, the study found statistically significant evidence of discrimination against African Americans, Latino Americans, and other minorities, in the number of contracts willing and able firms owned by these groups were able to obtain. For prime contracts under \$15,000 in total value, the study found statistically significant evidence of discrimination against Asian Americans, Latino Americans, minorities in general, and women, in the number

of contracts willing and able firms owned by members of these groups were able to obtain. For subcontracts, the study found statistically significant evidence of discrimination in the number of subcontracts that African American, Asian American, Latino American, and minority firms in general were able to obtain. In a review of contracts under its Earthquake program, the study found statistically significant evidence of discrimination against Asian Americans, minorities in general, and women in the number of contracts businesses owned by members of these groups were able to obtain. In construction-related professional services, the study found statistically significant evidence of discrimination against African Americans, Asian Americans, minorities in general and women. In printing and publishing contracts, the study found statistically significant discrimination against African Americans, Asian Americans, Latino Americans, minorities in general, and women. The study also reviewed testimonial evidence of discrimination that supported its findings of discrimination.

- In November 1992, the San Francisco Redevelopment Agency ("SFRA") issued a study of its use of minority- and women-owned business enterprises. The comprehensive study found that women-owned business enterprises received none of the publicly funded prime contract dollars and only 24 percent of the privately funded contract dollars SFRA would have expected given their availability. The study found from a survey of private construction contractors that minority- and women-owned businesses received none of the prime contracts and only 2.32 percent of the subcontract dollars. The study also surveyed 95 local minority- and women-owned construction firms, out of which 75 percent reported that prime contractors who use their firms on public contracts with W/MBE requirements never use their firms on private contracts.

- In May 1993, the Regional Transit Association of the San Francisco Bay Area issued a report entitled "The Utilization of Minority and Women-Owned Business Enterprises by Member Agencies of the Regional Transit Associa-

tion." The study found significant underutilization of minority- and women-owned enterprises in those jurisdictions in the Bay Area without programs designed to increase minority and women participation. The study also found that for each transit agency, including San Francisco's Municipal Railway, "M/WBEs were used less than we would expect given their availability." The study also examined anecdotal evidence of discrimination from 502 minority- and women-owned enterprises in the Bay Area.

- In December 2001, the Human Rights Commission issued a report entitled "Violence in Our City: Research and Recommendations to Empower Our Community," which addresses the increase in violence against African Americans that began in 2000, and discrimination against African Americans in San Francisco. This report supports the finding of the Board that an ordinance encouraging minority-owned enterprise participation in City contracting is necessary to remedy race-discrimination against African American-owned firms in San Francisco.

10. A number of broad disparity studies undertaken by State and other local governments and agencies also support the findings of discrimination in San Francisco's studies, including:

- In 1992, the Contra Costa County issued a comprehensive study of the use of women- and minority-owned businesses by that county. The study examined Contra Costa's own contracts, data about subcontractors collected from prime contractors, data on Contra Costa's payments to vendors, data on 7,993 minority- and women-owned vendors in the Bay Area identified from various directories, questionnaires on purchasing practices by Contra Costa officials and census data, testimony Contra Costa solicited in public hearings in Alameda and San Francisco, and Bay Area wide mail surveys of 540 women- and minority-owned businesses. The study found that minorities received a smaller share of Contra Costa County contracts than would be expected given their availability. The study also examined the private sector for construction in San Francisco, Oakland, and San Jose and found

that minority- and women-owned businesses received a smaller share of prime and subcontracts than would be expected given their availability. The study also found strong evidence of discrimination against women and minority firms in Contra Costa's professional services contracting and commodity purchases.

- In 1996, the City of Oakland and the Oakland Redevelopment Agency issued a study of the utilization of minorities and women in their contracting programs. The study revealed that even after having programs aimed at increasing contracting opportunities for minority- and women-owned businesses, those businesses still get fewer contracts than one would expect based on their availability. The study revealed that a culture of discrimination among prime contractors, lending institutions, and other businesses prevented minority- and women-owned businesses from competing for public contracting opportunities in Oakland. For instance, even though the majority of ready and willing construction contractors in Oakland were African American-owned, Caucasian male contractors received more than twice the contract dollars from 1991-1994 as African American contractors. And although nearly 68 percent of all ready and willing contractors were minority- and women-owned businesses, Caucasian-male owned firms received more than 55 percent of the contract dollars during this period. Even those minorities who achieved statistical parity in contract availability during the study period suffered from discrimination. Anecdotal evidence gathered for the study revealed that prime contractors often refuse to allow the minority- and women-owned businesses to perform subcontracting work after the contract has been awarded. Women contractors reported that they must ask male co-workers to present their ideas to prime contractors, since otherwise their ideas are ignored.

- In 1994, the City of Richmond, California commissioned a study to determine whether its race- and gender-conscious remedial contracting programs continued to be necessary. The study revealed great disparities between Caucasian male-owned firms, and minority- and women-owned businesses. For instance, although Cau-

casian men represented only 49 percent of the available contracting firms, 85 percent of all contract dollars went to those firms. The disparity was even greater in Richmond's professional services contracts, where Caucasian firms received 95 percent of the contract dollars even though such firms represent only 15 percent of the available firms. The study further revealed that although minority- and women-owned firms represented between 32 and 71 percent of the available firms depending on the particular industry (construction, professional services, engineering, and procurement), minority- and women-owned businesses never received more than 14.8 percent of the contract dollars in any industry. And testimonial evidence revealed that Richmond's MBE/WBE ordinance had done little to address the underlying causes of discrimination. Minorities and women were consistently faced with obstacles not placed before Caucasian male contractors, based solely on their race and gender. In fact, based on their experience, some MBEs and WBEs gave up trying to contract with Richmond in the future.

- In 1995 the California Senate Office of Research issued a report entitled "The Status of Affirmative Action in California." The report explained, in part, that "[c]ities and counties have affirmative action programs as a matter of public policy, as a requirement for contracting with the State, or because they receive federal money that requires attention to nondiscrimination hiring." The report concluded that despite past affirmative action efforts, "salaries remain disparate among racial and ethnic groups and between men and women."

- In April 1996, the California Senate Office of Research issued a report entitled "Exploring the Glass Ceiling and Salary Disparities in California State Government." The report examined the salary levels of 164,000 state civil service employees and compared compensation according to gender, race and ethnicity. The study found that women of equal educational attainment earn only \$.74 for every dollar earned by their male counterparts.

11. Based on the testimony, studies and reports contained in Board File Nos. 98-0612, 99-0266 and 99-1326, and the evidence before the Board in support of this Ordinance, the Board finds that Arab and Iranian Americans continue to suffer discrimination in the City's procurement process. In fact, discrimination against Arab Americans and Iranian Americans has increased dramatically. Based on testimony presented at public hearings before the Human Rights Commission and this Board between 2001 and 2003, and the Human Rights Commission Report issued in September 2002, the Board finds that since September 11, 2001, there has been a sharp increase in threats, harassment, violence, and discrimination against individuals perceived as having Middle Eastern origins in both the private sector in San Francisco as well as in the City's procurement processes. As a direct result of this systemic discrimination, Arab American and Iranian American-owned businesses have been prevented from obtaining City prime contracting and subcontracting.

12. In 1989, based on the significant evidence before it, this Board found that Native Americans who sought prime and subcontracting opportunities have received fewer such contracts than expected based on their availability, and that such underutilization was attributable to discrimination both in the private sector and in the City's procurement practices. Based on the historical record of discrimination against Native Americans, and the testimonial evidence given at public hearings, the Board found that there was compelling evidence of discrimination to support the addition of Native Americans to the MBE program and to justify remedial measures on their behalf. The HRC's 2003 disparity study reveals that there are no longer any San Francisco-based businesses in any industry that are owned by Native Americans and available to perform City prime contracts or subcontracts. Based on the significant evidence before it, the Board finds that the pervasive discrimination and hostility against Native Americans in the Bay Area and in the City's procurement processes has resulted in the recent disappearance of available San Francisco-based Native American-

owned contractors. The Board further finds that this discrimination against Native Americans will prevent Native Americans from re-establishing businesses in San Francisco without the bid/ratings discount program and subcontracting program set forth in this Ordinance. For that reason, the Board finds it necessary to continue to extend its remedial contracting program to businesses owned by Native Americans.

13. The Board has also reviewed and considered several volumes of collected social science materials concerning discrimination against women and minorities in the Bay Area and in public contracting in California. These social science materials strongly support, and are consistent with, the findings in the statistical and testimonial evidence that discrimination exists against women and minorities in the City's contracting and in the private market for similar contracts.

14. The Board has considered a substantial body of evidence in enacting the ordinance. The findings set forth herein represent certain salient portions derived from the evidence and hearings. These findings, however, are intended to be representative and non-exhaustive of the evidence and reasons supporting the enactment herein. The Board will consider relevant evidence that continues to be collected.

15. In enacting this ordinance, the Board considered and relied on (a) the fact that a substantial percentage of City agencies receive federal funds, a vast portion of which is expended in City contracts, (b) the federal requirements for eradication of discrimination, including the evidence supporting those requirements, and (c) all applicable constitutional standards including those that apply to federally funded projects.

16. This Board finds that the testimony of minority and women business owners who seek to enter into contracts with the City or are doing business with the City, as presented to this Board and the Human Rights Commission, offer clear and persuasive evidence of discrimination to such an extent that the disparity of contract dollars awarded to minority- and women-owned

enterprises can only be explained by discrimination. The statistical evidence, oral and written histories, and social science evidence reviewed by this Board also support this finding. Accordingly, this Board adopts this ordinance to remedy the specifically identified City contracting practices and conditions in the Community and industries that cause the exclusion or reduction of contracting opportunities for minority- and women-owned businesses in City prime and sub-contracting programs.

17. Based on a comparative review of the use of minority- and women-owned businesses in the public and private sectors in the City, oral and written histories and additional evidence, this Board finds that there is a substantial reduction in the use of minority- and women-owned firms in private sector contracting in the absence of MBE/WBE requirements such as those found in this ordinance. In the private sector, substantial evidence demonstrates that minority- and women-owned businesses are seldom or never used by prime contractors for projects that do not have MBE/WBE goal requirements. Therefore, this Board finds that if this ordinance were not enacted and the MBE/WBE goal requirements eliminated, the discrimination against and nonutilization of minority- and women-owned businesses now existing in the private sector would occur immediately in the awarding of City contracts.

18. This Board further finds that local businesses that seek prime contracting and subcontracting opportunities in City contracting continue to labor under a competitive disadvantage with businesses from other areas because of the higher administrative costs of doing business in the City (e.g., higher taxes, higher rents, higher wages and benefits for labor, higher insurance rates, etc.).

19. This Board finds that public interest is served by encouraging economically disadvantaged businesses to locate and to remain in San Francisco through the provision of bid discounts to such San Francisco businesses in the award of City contracts and by requiring prime contractors to use good faith efforts to use such busi-

nesses as subcontractors when there are subcontracting opportunities available on City contracts.

20. Additionally, this Board finds that policies and programs that enhance the opportunities and entrepreneurial skills of local businesses will best serve the public interest because the growth and development of such businesses will have a significant positive impact on the economic health of San Francisco by, among other things, the creation of local jobs and increased tax revenue.

21. The Board finds that affording a five percent bid discount for economically disadvantaged local businesses bidding on City contracts reduces the disadvantages under which these businesses compete.

22. The bid discount mechanism in this ordinance is used to assure equality in the treatment of opportunities to any bidder for City contracts. This Board further finds that the failure to use such a bid discount would result in discrimination against or preferential treatment to certain individuals and/or groups. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 210-99, File No. 990266, App. 7/30/99; Ord. 283-99, File No. 991326, App. 11/5/99; Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.3. DECLARATION OF POLICY.

It is the policy of the City and County of San Francisco to ensure full and equitable opportunities for minority business enterprises, woman business enterprises, and local business enterprises to participate as prime contractors in providing goods and services to the City. This program is intended to correct identified discriminatory practices inherent in the City's procurement process and in the award of prime contracts to MBE/WBEs. Another goal of this ordinance is to offset some of the economic disadvantages local businesses continue to face that are not shared by nonlocal businesses.

The City will continue to rely on the relationship between the percentages of MBEs/WBEs in the relevant sector of the San Francisco business community and their respective shares of City

contract dollars as a measure of the effectiveness of this ordinance in remedying the effects of the aforementioned discrimination.

The City is continuing to use a discount for local business in the award of City contracts in order to encourage businesses to locate and to remain in San Francisco and thereby enhance employment opportunities for persons living in San Francisco. The cost of locating and doing business in San Francisco continues to be as much as 15 percent and greater than the cost of doing business in the surrounding communities. Providing a five-percent bid discount for local businesses bidding on City contracts reduces the disadvantages under which City-located businesses labor when competing for City contracts. For that reason, affording them a five-percent bid discount makes good sense. In effect, the bid discount assists these businesses in contributing to the economic health of the City. The five-percent bid discount does not unduly hamper nonlocal businesses in the contracting process, and parallels the discounts awarded in many other local jurisdictions. (Added by Ord. 296-98, App. 10/5/98)

SEC. 12D.A.4. SCOPE.

The race- and gender-conscious bid discounts of this ordinance shall be afforded only to economically disadvantaged minority- and women-owned businesses in all specifically enumerated categories of City contracts for the procurement of goods and services subject to exemptions hereinafter specifically enumerated. The local business bid discount shall be afforded to all economically disadvantaged local businesses in the award of all City contracts for the procurement of goods and services subject to exceptions hereinafter specifically enumerated in Section 12D.A.15. (Added by Ord. 296-98, App. 10/5/98)

SEC. 12D.A.5. DEFINITIONS.

"Architect/Engineering Contracts" shall mean an agreement for architects, engineers, and other outside temporary professional design, consultant or construction management services for a public work project.

"Back contracting" shall mean any agreement or other arrangement between a prime contractor and its subcontractor that requires the prime contractor to perform or to secure the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefits of the subcontract. Such agreements or other arrangements include, but are not limited to, situations in which either a prime contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

"Best efforts" when required of contract awarding authority shall mean reasonable efforts to include minorities, MBEs, women, or WBEs in City contracting.

"Bid" shall mean and include a quotation, proposal, solicitation or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to the City and County of San Francisco for a price.

"Bidder" shall mean any business that submits a quotation, bid or proposal to provide labor, materials, equipment, supplies or services to the City and County of San Francisco.

"City" shall mean the City and County of San Francisco.

"Commercially useful function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. MBEs, WBEs or LBEs that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the City. When the City requires and seeks specialty products made to order for the City or otherwise seeks products which, by industry practice, are not regularly stocked in warehouse inventory but instead are purchased directly from the manufacturer, the value of the "commercially useful function" provided by a supplier

or distributor shall be valued at no more than five percent of the cost of the product. When the City requires and seeks products which are, by industry practice, stocked in warehouse inventory and are in fact, regularly stocked by the listed supplier or distributor, the value of the "commercially useful function" provided by the supplier or distributor shall not exceed sixty percent of the cost of the product. If the listed supplier or distributor does not regularly stock the required product, the value of the "commercially useful function" provided by the supplier or distributor shall be valued at no more than five percent of the cost of the product.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Commodity" shall mean products, including materials, equipment and supplies, purchased by the City.

"Concession" shall mean any privilege conferred by the City on a person to engage in business on property owned or leased by the City.

"Contract" shall mean and include any agreement between the City and a person to provide or procure labor, materials, equipment, supplies or services to, for or on behalf of the City. A "contract" shall include an agreement between the City and a person or nonprofit entity to perform construction-related services or fund the performance of such services. A "contract" does not include: (1) awards made by the City with federal/State grant or City funds to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise, or concession agreements; (5) agreements to use City real property; (6) gifts of materials, equipment, supplies or services to the City; or (7) agreements with a public agency except as provided in Section 12D.A.9(E).

"Contract awarding authority" shall mean the City officer, department, commission, em-

ployee or board authorized to enter into contracts on behalf of the City. In the case of an agreement with a person or nonprofit entity to perform or fund the performance of construction-related services, the term "contract awarding authority" shall mean the person or nonprofit entity receiving funds from the City to perform or fund the performance of such services.

"Contractor" shall mean any person(s), firm, partnership, corporation, or combination thereof, who submits a bid or proposal to perform, performs any part of, agrees with a person to provide services relating to and/or enters into a contract with department heads and officers or contract awarding authorities empowered by law to enter into contracts on the part of the City for public works or improvements to be performed, or for goods or services or supplies to be purchased at the expense of the City or to be paid out of monies deposited in the treasury or out of trust monies under the control of or collected by the City.

"Control" of a business shall refer to the possession of the legal authority and power to manage business assets, good will and daily operations of the business, and the active and continuous exercise of such authority and power in determining the policies and directing the operations of the business.

"Director" shall mean the Director of the Human Rights Commission of San Francisco.

"Discount" shall mean an upward or downward price adjustment, according to the context, that is made for the purpose of remedying, in the case of MBEs and WBEs, identified discrimination, and, in the case of LBEs, the competitive disadvantage caused by the higher administrative costs of doing business in the City.

"Economically disadvantaged business" shall mean a business whose average gross annual receipts in the three fiscal years immediately preceding its application for certification as a MBE, WBE or LBE do not exceed the following limits: (1) public works/construction—\$14,000,000; specialty construction contractors—\$7,000,000; (2) goods/materials/equipment and general services suppliers—\$7,000,000; (3) professional ser-

vices and architect/engineering—\$2,500,000; (4) trucking—\$3,500,000; and (5) telecommunications—\$5,000,000. Any business under common ownership, in whole or in part, with any other business(es) shall be considered an "economically disadvantaged business" only if the aggregate gross annual receipts of all the businesses under such common ownership do not exceed the limits specified in this section. All businesses owned by married spouses or domestic partners shall be considered under common ownership unless the businesses are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate either business.

"Franchise" shall mean and include the right or privilege conferred by grant from the City, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in the grant. A "franchise" shall not include an agreement to perform construction-related services.

"General services contract" shall mean an agreement for those services that are not professional services. Examples of "General Services" include: janitorial, security guard, pest control, parking lot management and landscaping services.

"Good-faith efforts" when required of a contract awarding authority or department shall mean the actions undertaken by a department to obtain MBE or WBE participation in a contract as prime contractors, and shall include the following efforts: (1) encouraging MBE/WBEs to attend prebid meetings scheduled by a department or the Commission to inform potential contractors of contracting opportunities; (2) advertising in general circulation media, trade association publications and minority/woman business focused media and posting the contacting opportunity on the Office of Contract Administration's website pursuant to Section 12.D.A.9(A)6; (3) notifying MBE/WBEs that are available to perform the work contemplated in a contract and soliciting their interest in the contract; (4) dividing the contract work into economi-

cally feasible units to facilitate MBE/WBE participation in the contract; (5) pursuing solicitations of interest by contacting MBE/WBEs to determine whether these businesses are interested in participating on the contract; (6) providing MBE/WBEs with adequate information about the plan, specifications and requirements of the contract; (7) where applicable, negotiating with MBE/WBEs in good faith and demonstrating that MBE/WBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capabilities; and (8) using the services of available community and contractors' groups, local, State or federal minority and woman business assistance offices that provide assistance in the recruitment of MBE/WBEs for public sector contracts.

"Good-faith efforts" when required of a prime city contractor shall mean the steps undertaken to comply with the goals and requirements imposed by the City for participation by MBE/WBEs as subcontractors, and shall include the following:

(1) Attending any presolicitation or prebid meetings scheduled by the City to inform all bidders of MBE/WBE program requirements for the project for which the contract will be awarded;

(2) Identifying and selecting specific items of the project for which the contract will be awarded to be performed by MBE/WBEs to provide an opportunity for participation by those enterprises;

(3) Advertising for MBEs or WBEs that are interested in participating in the project, not less than 10 calendar days before the date the bids can first be submitted, in one or more daily or weekly newspapers, trade association publications, minority or trade-oriented publications, trade journals, or other media, specified by the City. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids can first be submitted;

(4) Providing, not less than 10 calendar days prior to the date on which bids can first be submitted, written notice of his or her interest in bidding on the contract to the number of MBEs

or WBEs required to be notified by the project specifications. The City shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises that are certified by the Director as MBE/WBEs;

(5) Following up initial solicitations of interest by contacting potential MBE/WBE subcontractors to determine with certainty whether those enterprises were interested in performing specific items of the project;

(6) Providing interested MBE/WBEs with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;

(7) Requesting assistance from minority and women community organizations; minority and women contractor or professional groups; local, State or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available;

(8) Negotiating in good faith with interested MBEs or WBEs, and not unjustifiably rejecting as unsatisfactory bids or proposals prepared by any MBEs or WBEs, as determined by the City;

(9) Where applicable, advising and making efforts to assist interested MBE/WBEs in obtaining bonds, lines of credit, or insurance required by the City or contractor;

(10) Making efforts to obtain MBE/WBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

"Human Rights Commission (HRC)" shall mean the Human Rights Commission of San Francisco, hereinafter referred to as the "Commission."

"Joint venture" shall mean an association of two or more businesses acting as a contractor and performing or providing services on a contract, in which each joint venture partner combines property, capital, efforts, skill, and/or knowledge and each joint venture partner shares in

the ownership, control, management responsibilities, risks and profits of the joint venture in proportion to its claimed level of participation.

"Lease" shall mean and include an agreement by which the City or any contracting agency thereof, grants to a person the temporary possession and use of property for consideration.

"Local business" or "Local business enterprise (LBE)" shall mean an economically disadvantaged business that is an independent and continuing business for profit, performs a commercially useful function and is a firm that:

(1) Has fixed offices or distribution points located within the geographical boundaries of the City where a commercially useful function is performed. Businesses that supply commodities must continuously maintain warehouses stocked with inventory within the geographical boundaries of the City. Truckers must park their registered vehicles and trailers within the geographical boundaries of the City. Post office box numbers or residential addresses shall not suffice to establish status as a "Local Business";

(2) Is listed in the Permits and License Tax Paid File with a San Francisco business street address; and

(3) Possesses a current Business Tax Registration Certificate at the time of the application for certification as a local business;

(4) Has been located and doing business in the City for at least six months preceding its application for certification as a local business; and

(5) Is certified as an LBE pursuant to Section 12D.A.6(B)(1).

No business that is owned in part or in whole by a full time City employee or City officer shall be considered a "local business" or "local business enterprise (LBE)" within the meaning of this ordinance.

"Lower-tier subcontracting" shall mean any agreement or other arrangement between a subcontractor and a person as defined herein where it is agreed that said person shall to perform any term, condition or obligation imposed by the subcontract upon the subcontractor.

"Minority," "minorities," or "minority person" shall mean members of one or more of the following ethnic groups:

- African Americans: (defined as persons whose ancestry is from any of the Black racial groups of Africa or the Caribbean);
- Arab Americans: (defined as persons whose ancestry is from an Arabic speaking country that is a current or former member of the League of Arab States);
- Asian Americans (defined as persons with Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian Indian, and Southeast Asian ancestry);
- Iranian Americans (defined as persons whose ancestry is from the country of Iran);
- Latino Americans (defined as persons with Mexican, Puerto Rican, Cuban, Central American or South American ancestry. Persons with European Spanish ancestry are not included as Latino Americans); and
- Native Americans (defined as any person whose ancestry is from any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

"Minority business enterprise (MBE)" shall mean an economically disadvantaged local business that is an independent and continuing business for profit, performs a commercially useful function, is owned and controlled by one or more minority persons residing in the United States or its territories and is certified as an MBE pursuant to Section 12D.A.6(B).

"Office" or "offices" shall mean a fixed and established place where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an "office" under the ordinance. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an "office." The office is not required to be the headquarters for the business but it must be

capable of providing all the services to operate the business for which LBE certification is sought.

"Owned," for purposes of determining whether a business is a MBE or WBE shall mean that minorities or women, as the context requires:

- (1) Possess an ownership interest of at least 51 percent of the business;
- (2) Possess incidents of ownership, such as an interest in profit and loss, equal to at least the required ownership interest percentage; and
- (3) Contribute capital, equipment to the business equal to at least the required ownership percentage. Promissory notes are not sufficient to constitute capital contributions.
- (4) Contribute expertise relevant to the business' essential functions at least equivalent to the ownership interest.

For an individual seeking MBE or WBE certification, ownership shall be measured as though the applicant's ownership were not subject to the community property interest of a spouse, if both spouses certify that (a) only the woman or minority spouse participates in the management of the business and the nonparticipating spouse relinquishes control over his/her community property interest in the subject business or (b) both spouses have bona fide management and control of the business.

"Participation commitment" shall mean the targeted level of MBE/WBE subcontractor participation that each prime city contractor has designated in its bid.

"Participation goals" shall mean the targeted levels of City-wide MBE/WBE participation in City prime contracts that reflect the relevant share of MBEs or WBEs in a given industry or profession referred to as "percent availability" in the utilization indices contained on file with the Clerk of this Board in File No. 98-0612.

"Percent availability" shall mean the relevant share of MBEs or WBEs in a given industry or profession.

"Person" includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, cooperatives, legal representatives, trustees, trustees

in bankruptcy, receivers, or any group of persons, including any official, agent or employee of the City.

"Professional services contract" shall mean an agreement for services which require extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of professional service providers include licensed professionals such as accountants, and non-licensed professionals such as software developers and financial and other consultants, except that services of architects, engineers, and other outside temporary professional design, consultant or construction management services for a public work project shall be considered architect/engineering contracts and shall not be considered professional services contracts for the purpose of this Ordinance.

"Public works/construction contract" shall mean an agreement for the erection, construction, renovation, alteration, improvement, demolition, excavation, installation, or repair of any public building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the City and County of San Francisco, the cost of which is to be paid wholly or partially out of moneys deposited in the treasury of the City and County.

"Services" shall mean Professional Services and General Services.

"Subcontractor" shall mean any business providing goods or services to a contractor for profit, if such goods or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City.

"Subcontractor participation goals" shall mean the targeted level of MBE/WBE subcontractor participation designated by the Director for prime city contracts.

"Woman business enterprise (WBE)" shall mean an economically disadvantaged local business that is an independent and continuing business for profit, performs a commercially useful

function, is owned and controlled by one or more women residing in the United States or its territories and is certified as a WBE pursuant to Section 12D.A.6(B). (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 210-99, File No. 990266, App. 7/30/99; Ord. 283-99, File No. 991326, App. 11/5/99; Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.6. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.

(A) In addition to the duties and powers given to the Human Rights Commission elsewhere, the Commission shall:

1. Collect, analyze and periodically report to this Board relevant data that will assist this Board in determining whether (a) the scope of this ordinance in terms of race- or gender-conscious remedies shall be expanded to include new contract areas or minority groups and (b) whether the scope of this ordinance should be limited because the City has met its obligation to adopt and to implement necessary measures to remedy both its active discrimination and its passive perpetuation of private discrimination;

2. Levy the same sanctions that a contracting awarding authority may levy as specified in Section 12D.A.9(A)(7);

3. When necessary, subpoena persons and records, books and documents for a proceeding of the Commission or an investigation by the Director or an audit pursuant to Section 12D.A.6(E) conducted to further the purposes of this ordinance;

4. Adopt rules and regulations establishing standards and procedures for effectively carrying out this ordinance. Among other things, the rules and regulations shall provide for administrative procedures that will allow a business to prove and the Commission to recommend to this Board that the ordinance's remedial measures should not be applied to an industry or profession because MBE/WBE participation in City prime contracts has reached parity with MBE/WBE participation in the relevant business community and that MBE/WBEs no longer suffer from a discrimination-induced competitive disad-

vantage in the applicable industry or profession. The regulations shall also provide a mechanism for contractors to seek a determination by the Director that a MBE or WBE may not be granted a race- or gender-conscious bid discount where it is demonstrated that the MBE's or WBE's bid price is not attributable to the effects of past discrimination;

5. Issue forms for the Controller or contract awarding departments to collect information from contractors as prescribed by this ordinance;

6. Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor as specified in Section 12D.A.16(b), (ii) the Director's denial of an application for or revocation of the certification of a business as an MBE, WBE, or LBE, as specified in Section 12D.A.6(B)(2), or (iii) the Director's denial of a request to waive or to reduce subcontractor participation goals as specified in Section 12D.A.17(H);

7. By regulation require contract awarding authorities, departments and the Controller to provide to the Director such information as will be necessary to enable the Director to keep a database from which discrimination can be identified, to report to the Mayor and the Board of Supervisors at the end of each fiscal year on the progress each City department has made towards the achievement of MBE and WBE participation goals and to perform his/her other duties. The database is a public record available to the public as provided by state and local law;

8. Adopt rules and regulations as deemed necessary by the Director to ensure that the joint venture bid/ratings discount is applied only to joint ventures where the MBE, WBE or LBE has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the MBE, WBE or LBE.

9. Consistent with the provisions of the ordinance make such other rules and regulations as are necessary to guide its implementation.

(B) In addition to the duties and powers given to the Director elsewhere, the Director shall have the following duties and powers:

1. Through appropriately promulgated procedures, the Director shall certify businesses as bona fide MBEs/WBEs/LBEs. These procedures

shall provide that any business seeking certification as an LBE shall meet the definition of an LBE and possess or establish all of the following: (1) business cards for the San Francisco office; (2) business stationery for the San Francisco office; (3) a written agreement for occupancy of a San Francisco office including documentation of payment of monetary rent (receipts and copies of cancelled checks); (4) a listing of the business in an appropriate business buyers guide such as a telephone yellow pages listing San Francisco based businesses; (5) a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as an LBE; (6) a conspicuously displayed business sign at the San Francisco business premises except where the business operates out of a residence; and (7) licenses issued to the business owner appropriate for the type of business for which the enterprise seeks certification;

2. Except where the Director cannot certify a business because the business has not been established in San Francisco for the requisite six months, whenever the Director denies an application for or revokes the certification of a business as a MBE, WBE, LBE because the business is not eligible to be certified as a bona fide MBE, WBE, LBE, the Director shall, within three working days of his/her decision, notify the aggrieved business in writing of the basis for revocation or denial of certification and the date on which the business will be eligible to reapply for certification. The notice shall be transmitted to the business via certified mail or via facsimile. The Director shall require a business to wait at least six months but not more than two years after the denial or revocation before reapplying to the Director for certification as a MBE, WBE or LBE. The Director shall provide any business whose certification is revoked an opportunity to be heard within three business days of the revocation. A business may appeal the Director's denial or revocation of certification of a business as an MBE, WBE, or LBE to the Commission. The appeal must be filed with the Commission within three business days following receipt of the Director's decision. Notice by the Director to

the business of denial or revocation of certification as an MBE, WBE or LBE shall apprise the business of its right to appeal the decision;

3. The Director shall have the ultimate responsibility for ensuring that the necessary data is collected and analyzed. Annually, and more often if the Director deems necessary, the Director shall analyze the most recently available data of MBEs and WBEs in the various industries and professions doing business with the City. Applying statistically sound methods of analysis and considering other evidence of discrimination, the Director shall identify areas of contracting where the City or any of its departments (a) is failing to meet the participation goals to such an extent that an inference of discrimination can be made, or (b) is otherwise discriminating in its contracts. In addition, the Director shall identify areas of contracting where the City is meeting and/or exceeding participation goal to such an extent that the MBE or WBE bid discounts can no longer be justified. The results of this study shall be included in the Commission's annual report required by Section 12D.A.18(B);

4. Not later than July 1st of each fiscal year, the Director shall transmit to this Board proposed amendments to this ordinance that the Director deems necessary to ensure that the ordinance provides adequate remedies for identified discrimination while going no further than necessary to remedy the identified discrimination;

5. The Director shall work with the Controller and City departments to implement a City-wide prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City, within 30 days after the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City;

6. The Director shall provide information and other assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;

7. The Director shall assist the City to increase participation by MBEs and WBEs in City contracts;

8. The Director shall continue to develop and to strengthen education and training programs for MBEs and WBEs and City contract awarding personnel;

9. The Director shall grant waivers as set forth in Sections 12D.A.15 and 12D.A.17(E) through (H), and may disqualify a bidder or contractor as set forth in Section 12.D.A.16(b).

(C) The requirements of this ordinance are in addition to those imposed by the United States or the State of California as a condition of financial assistance or otherwise. In contracts which involve the use of any funds furnished, given or loaned by the government of the United States or the State of California, all laws, rules and regulations of the government of the United States or the State of California or of any of its departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this ordinance when such laws, rules or regulations are in conflict. In addition, the Director may authorize the substitution of such State or federal minority business enterprise and women business enterprise requirements for the requirements of this ordinance whenever such State or federal requirements are substantially the same as those of this ordinance.

(D) The Director, with the approval of the Commission, may enter into cooperative agreements with agencies, public and private, concerned with increasing the use of MBEs and WBEs in government contracting, subject to the approval of this Board.

(E) The Director, in cooperation with the Controller, shall randomly audit at least three prime contractors each fiscal year in order to insure their compliance with the provisions of this ordinance. The Director, in cooperation with the Controller, shall furthermore randomly audit 10 percent of the joint ventures granted bid discounts in each fiscal year. The Controller shall have the right to audit the books and records of the contractors, joint venture participants, and any and all subcontractors to insure

compliance with the provisions of this ordinance. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.7. POWERS AND DUTIES OF THE CONTROLLER.

(A) In addition to the duties given to the Controller elsewhere, the Controller shall work cooperatively with the Director to provide such contractual encumbrance and payment data as the Director advises are necessary to form the basis of the Commission's report to the Mayor, this Board and the public on the participation of MBEs and WBEs in City prime contracts. If any department refuses or fails to provide the required data to the Controller, the Controller shall immediately notify the Mayor, this Board and the Director.

(B) The Controller shall not certify the award of any contract subject to this ordinance where the Director has notified the Controller that the contract awarding authority has not provided the information the Director advises is necessary under this ordinance.

(C) Each request for payment to a City contractor submitted to the contract awarding authority shall be accompanied by a subcontractor participation form approved by the Commission. That form shall contain information that the Commission has determined is necessary to enable the Commission and the Director (1) to monitor compliance by City departments and their prime contractors with their obligations under this ordinance (2) to determine whether City departments are achieving their prime and subcontracting goals under this ordinance, (3) to determine whether to recommend changes in this ordinance to ensure that the ordinance continues to serve as a remedy for discrimination in contracting while going no further than necessary to remedy that discrimination, and (4) to make such other reports and analyses as are required by this ordinance.

In the event that a request for payment fails to include the information required pursuant to this Section, the contract awarding authority shall, within two working days, notify the Direc-

tor and the affected prime contractor[s] of the failure and afford each affected prime contractor an opportunity to be heard promptly. That notice shall inform the contractor that the contract awarding authority has tentatively determined that the information has not been provided, what information is missing and that if this failure is substantiated, then the Controller will be notified to withhold 20 percent of the payment until the information is provided. If the Controller finds, after consultation with the Director and the notice and opportunity to be heard, that the information has not been provided, the Controller shall withhold 20 percent of the payment otherwise due until the information is provided.

(D) It is the City's policy that MBEs, WBEs and LBEs should be paid by the City within 30 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City. The Controller shall work with the Director and representatives of City departments to implement this City-wide prompt-payment policy.

(E) The contract awarding authority shall require all prime contractors to submit, within 10 days following payment to the prime contractor of moneys owed for work completed on a project, an affidavit under penalty of perjury, that all subcontractors on the project or job have been paid and the amounts of each of those payments. The name, telephone number and business address of every subcontractor shall be listed on the affidavit. If a prime contractor fails to submit this affidavit, the contract awarding authority shall notify the Director who shall take appropriate action as authorized under Section 12D.A.16(B) and (F). (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.8. POWERS AND DUTIES OF THE MAYOR.

In addition to the duties given to the Mayor elsewhere, the Mayor shall:

1. By July 1st of each fiscal year, issue notices to all City departments informing them of their duties under this ordinance. The notice

shall contain the following information: (1) the City-wide MBE/WBE participation goals that departments are expected to use good-faith efforts to attain during the fiscal year and that a department's failure to use good-faith efforts to attain the MBE/WBE participation goals shall be reported to this Board in the Commission's annual report; and (2) the data each department is required to provide the Controller on each contract award;

2. Coordinate and enforce cooperation and compliance by all departments with this ordinance. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.9. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.

(A) Contract awarding authorities shall:

1. Use good-faith efforts for all contracts subject to the bid/ratings discount provisions of this ordinance to solicit and to obtain quotes, bids or proposals from MBEs and WBEs on all solicitations, or document their unavailability;

2. Unless otherwise indicated in this ordinance, extend a discount in all bids, proposals and contracts and in the composition of rating scales as follows: (1) a five percent discount to (i) an LBE or (ii) a joint venture with MBE or WBE participation that equals or exceeds 35 percent but is under 40 percent; or (iii) where a joint venture is composed of only LBEs with no MBE or WBE participation or where the MBE or WBE participation is less than 35 percent; (2) a seven and one-half percent bid discount to a joint venture with MBE or WBE participation that equals or exceeds 40 percent; (3) a 10 percent discount to (i) an MBE or WBE or (ii) a joint venture between or among MBEs or/and WBEs.

The contracting awarding authority shall apply the aforementioned appropriate bid/ratings discount only to a joint venture (1) that meets the requirements of Section 12D.A.6(A)7 and (2) when the MBE or WBE is an active partner in the joint venture and performs work, manages the job and takes financial risks in proportion to the required level of participation stated in the

bid documents and is responsible for a clearly defined portion of the work to be performed, and shares proportionately in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the MBE or WBE joint venture's work shall be set forth in detail separately from the work to be performed by the nonMBE or nonWBE joint venture partner. The MBE or WBE joint venture's portion of the contract must be assigned a commercially reasonable dollar value;

3. Arrange contracting by size and type of work to be performed so as most effectively to enhance the opportunity for participation by MBEs and WBEs to the maximum extent feasible. As soon as practical before soliciting quotes, bids or proposals, all contract awarding authorities or in the case of a professional services contract, the department making the contract award recommendation, shall submit all large proposals to the Director for review. The purpose of the Director's review is to determine whether the proposed project can be divided into smaller projects so as to enhance the opportunity for participation by MBEs and WBEs in the project purposes of this subsection, the term "large project" shall mean the following: (1) any public works/construction project estimated to cost more than \$5,000,000; and (2) any professional services contract estimated to cost more than \$100,000. If the Director determines, after consulting with the contract awarding authority or department responsible for the project, that the project can be divided into smaller projects, the contract awarding authority or department shall comply with the Director's determination and issue the solicitation for quotes, bids or proposals in accordance with the Director's determination;

4. Adjust bid bonding and insurance requirements in accordance with the most current version of the City's "Contract Insurance Manual" or as otherwise authorized by the City Risk Manager, Department of Administrative Services;

5. Use the City's Surety Bonding Program set forth in Administrative Code Section 12D.A.10 to assist MBEs, WBEs and LBEs bidding on and

performing City public works contracts to meet bonding requirements and/or obtain construction loans;

6. Submit to the Office of Contract Administration (OCA) in electronic format or a format specified by the all bid opportunities, requests for proposals and Solicitations for which published notice or advertising is required, no later than 10 calendar days prior to the announcement of the bid opportunity, request for proposal or Solicitation. A contract awarding authority must obtain a waiver from its commission, or in the case of a department that has no commission, from the Board of Supervisors, if it cannot meet the requirements of this Section 12D.A.9(A)6. The OCA shall cause to be posted upon a website the following information concerning current bids, requests for proposals and Solicitations: the title and number; the name of the contract awarding authority; and the name and telephone number of the person to be contacted for further information. Such information shall be posted with sufficient lead time to provide adequate notice and opportunity to potential City contractors and vendors to participate in the bid opportunity, request for proposals or Solicitation, but in no event less than 10 calendar days prior to the due date for such bid opportunity, request for proposals or Solicitation;

7. Impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this ordinance, which shall include, but are not limited to:

- (a) Refuse to award a contract,
- (b) Order the suspension of a contract,
- (c) Order the withholding of funds,
- (d) Order the revision of a contract based upon a material breach of contract provisions pertaining to MBE or WBE participation,
- (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for providing goods or services to the City for a period not to exceed five years, based on the standards set forth in this ordinance and rules and regulations promulgated by the Commission. Any business disqualified under this subsection shall have a right to review and recon-

sideration by the Commission after two years upon a showing of corrective action indicating that violations are not likely to recur;

8. Not award any contract to a person or business that is disqualified from doing business with the City under the provisions of this ordinance;

9. Designate a staff person to be responsible for responding to the Director and Commission regarding the requirements of this ordinance;

10. Maintain accurate records as required by the Director and the Commission for each contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts made by a contractor to solicit bids from and award subcontracts to MBEs and WBEs and LBEs;

11. Where feasible, provide technical assistance to MBEs and WBEs to increase their ability to compete effectively for the award of City contracts;

12. Work with the Director and the Controller to implement a City-wide prompt-payment policy requiring that MBEs, WBEs and LBEs be paid by the City within 30 days of the date on which the City receives an invoice from an MBE, WBE or LBE for work performed for the City;

13. Provide the Director with written notice of all contract amendments, modifications, supplements and change orders that cumulatively result in an increase or decrease of the contract's dollar amount of more than 10 percent. Such notice shall be provided within 10 days of each such contract modification;

14. Whenever contract amendments, modifications, supplements or change orders cumulatively increase the total dollar value of a contract by more than 10 percent, the contract awarding authority shall require compliance with those MBE and WBE provisions of this ordinance that applied to the original contract;

15. All contract amendments, modifications, supplements or change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more shall be subject to prior

approval of the Director, who shall review the proposed amendment, modification, supplement or change order to correct contracting practices that exclude women or minorities from new contracting opportunities.

(B) Contract awarding authorities or departments may invite, encourage or request businesses to joint venture on any contract to promote MBE or WBE participation.

(C) For the purpose of determining MBE and WBE participation, contracts awarded to joint ventures in which one or more MBEs or WBEs are combined with one or more businesses that are not MBEs or WBEs shall be deemed by the contract awarding authority to be awarded to MBEs or WBEs only to the extent of the MBEs or WBEs participation in the joint venture. MBE and/or WBE participation in the supply of goods shall be included in determining MBE and/or WBE participation in a joint venture if the goods are supplied in accordance with established general industry practice.

(D) Contract awarding authorities shall ensure that all contracts subject to this ordinance include the following requirements, in addition to such other requirements as may be set forth elsewhere:

1. Each bidder, proposer and contractor shall be required to sign an affidavit, declaring under penalty of perjury, attesting to its intention to comply fully with the provisions of this ordinance and attesting to the truth and accuracy of all information provided regarding such compliance;

2. Each contract shall incorporate this ordinance by reference and shall provide that the wilful failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract;

3. Contracts shall provide that in the event that the Director finds that any bidder, subcontractor or contractor that wilfully fails to comply with any of the provisions of this ordinances, rules and regulations implementing the ordinance or contract provisions pertaining to MBE or WBE participation—the bidder, subcontractor or contractor shall be liable for liquidated dam-

ages for each contract in an amount equal to the bidder's or contractor's net profit on the contract, 10 percent of the total amount of the contract or \$1,000, whichever is greatest, as determined by the Director pursuant to Section 12D.A.16(C). All contracts shall also contain a provision in which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder, subcontractor or contractor from any contract with the City;

4. Contracts shall require all contractors to maintain records, including such information requested by the Director or Commission, necessary for monitoring their compliance with this ordinance and shall require prime contractors to include in any subcontract with an MBE or WBE a provision requiring the subcontractor to maintain the same records;

5. Contracts shall require prime contractors, during the term of the contract, to fulfill the MBE and WBE participation commitments submitted with their bids;

6. Contracts shall require prime contractors to include in any subcontract with an MBE or WBE a provision requiring the prime contractor to compensate any MBE or WBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if the prime contractor fails to comply with its commitment to use MBE and WBE subcontractors as specified in the bid/proposal unless the Commission and the contract awarding authority both give advance approval to the prime contractor to substitute subcontractors or otherwise modify the commitments in the bid/proposal documents. Contracts shall also require prime contractors to compensate any MBE or WBE subcontractor for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if the prime contractor does not fulfill its commitment to use the MBE or WBE subcontractor as specified in the bid/proposal unless the Commission and the contract awarding authority both give advance approval to the prime

contractor to substitute subcontractors or otherwise modify the commitments in the bid/proposal documents. This provision shall also state that it is enforceable in a court of competent jurisdiction;

7. Contracts shall require prime contractors, whenever amendments, modifications, supplements, or change orders cumulatively increase the total dollar value of a construction contract by more than 10 percent, to comply with those MBE and WBE provisions of this ordinance that applied to the original contract with respect to the amendment, modification, supplement or change order;

8. Contracts shall require prime contractors to submit to the Director for approval all contract amendments, modifications, supplements, and change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more. The Director shall review the proposed amendment, modification, supplement or change order to correct any contracting practices that exclude women and minorities from new contracting opportunities;

9. Contracts in which subcontracting is used shall prohibit back contracting to the prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to MBE and WBE utilization;

10. Contracts in which subcontracting is used shall require the prime contractor to pay its subcontractors within three working days after receiving payment from the City unless the prime contractor notifies the Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor, in which case the prime contractor may withhold the disputed amount but shall pay the undisputed amount. The Director may, upon making a determination that a bona fide dispute exists between the prime contractor and subcontractor, waive this three day payment requirement. In making the determination as to whether a bona

fide dispute exists, the Director shall not consider the merits of the dispute. Contracts in which subcontracting is used shall also require the contractor/consultant, within 10 working days following receipt of payment from the City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each;

11. Contracts shall require contractors and subcontractors to maintain records necessary for monitoring their compliance with this ordinance for three years following completion of the project and shall permit the Commission and Controller to inspect and audit such records.

(E) All contracts or other agreements between the City and persons or entities, public or private, in which such persons or entities receive money from or through the City for the purpose of contracting with businesses to perform public improvements, shall require such persons or entities to comply with the provisions of this ordinance in awarding and administering such contracts. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 174-00, File No. 001105, App. 7/14/2000; Ord. 189-02, File No. 021095, App. 9/27/2002; Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.10. PUBLIC WORKS CONTRACTS.

(A) In addition to the general findings set forth in Section 12D.A. 2, and based upon the record before this Board, the Board hereby finds that the evidence before the Board relating to the award of prime public works contracts for fiscal years 1992-93, 1993-94, 1994-95, 1996-97, 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City prime public works contracts. Further, the Board finds that race-neutral measures employed by the City have not prevented such discrimination against MBEs and WBEs from occurring.

(B) Contract awarding authorities shall apply bid discounts as enumerated in Section 12D.A.9(A) to all public work contracts the estimated cost of which exceeds \$10,000.

(C) Bonding and Financial Assistance Program.

1. **Program Description.** The City and County of San Francisco, acting through its Human Rights Commission ("HRC"), intends to provide guarantees to private bonding companies and financial institutions in order to induce those entities to provide required bonding and financing to eligible contractors and subcontractors bidding on and performing City public work contracts. This bonding and financial assistance program is subject to the provisions of this Subsection 12D.A.10(C).

2. **Eligible Contracts.** The assistance described in this Subsection 12D.A.10(C) shall be available for any City public works contract awarded in accordance with San Francisco Administrative Code Chapter 6.

3. **Eligible Businesses.** Businesses must meet the following criteria to qualify for assistance under this Subsection 12D.A.10(C):

(a) The business may be either a prime contractor or subcontractor; and

(b) The business must be certified by the HRC as a Minority Business Enterprise ("MBE"), Woman Business Enterprise ("WBE") or Local Business Enterprise ("LBE") according to the requirements of San Francisco Administrative Code Chapter 12D.A;

(c) The business may be required to participate in a "bonding assistance training program" as offered by the HRC, which is anticipated to provide the following:

(i) Bond application assistance,

(ii) Assistance in developing financial statements,

(iii) Assistance in development of a pre-bond surety profile,

(iv) Identification of internal financial control systems,

(v) Development of accurate financial reporting tools, and

4. **Agreements Executed by the Human Rights Commission.** The HRC is hereby authorized to enter into the following agreements in

order to implement the bonding and financial assistance program described in this Subsection 12D.A.10(C):

(a) With respect to a surety bond, the agreement to guaranty up to 40 percent of the face amount of the bond or \$750,000, whichever is less;

(b) With respect to a construction loan to be made to a contractor or subcontractor, an agreement to guaranty up to 50 percent of the original principal amount of the construction loan or 50 percent of the actual loss suffered by the financial institution as a result of a loan default, whichever is less; provided that in any event the City's obligations with respect to a guaranty shall not exceed \$750,000;

(c) Any other documents deemed necessary by the HRC to carry out the objectives of this program, provided that such documents shall be subject to review and approval by the City Attorney's Office.

5. **Monitoring and Enforcement.** The HRC shall maintain records on the use and effectiveness of this program, including but not limited to (1) the identities of the businesses and bonding companies participating in this program, (2) the types and dollar amounts of public work contracts for which the program is utilized, and (3) the types and dollar amounts of losses which the City is required to fund under this program. The HRC shall submit written reports to the Board of Supervisors every six months beginning January 1, 2001, advising the Board of the status of this program and its funding capacity, and an analysis of whether this program is proving to be useful and needed.

6. **Funding and Accounts.** As of July 1, 2001, funding for this program may be derived from the following sources:

(a) The Board of Supervisors has appropriated or will appropriate funds for the operation of this program.

(b) Each Department authorized to contract for public works or improvements pursuant to San Francisco Administrative Code Chapter 6 shall commit to this program up to ten percent (10%), but not less than one percent (1%), of the

budget for every public work or improvement undertaken. (A "public work or improvement" is defined in San Francisco Administrative Code Chapter 6.) This subsection is effective for those public works or improvements where the award of the construction contract (as defined and regulated by Administrative Code Chapter 6) occurs after July 1, 2001.

(c) The Treasurer of the City and County of San Francisco is hereby authorized to negotiate a line(s) of credit or any credit enhancement program(s) or financial products(s) with a financial institution(s) to provide funding; the program's guaranty pool may serve as collateral for any such line of credit.

In the event the City desires to provide credit enhancement under this Subsection for a period in excess of one fiscal year, the full aggregate amount of the City's obligations under such credit enhancement must be placed in a segregated account encumbered solely by the City's obligations under such credit enhancement.

7. Term of Bonding Assistance Program. The HRC is authorized to enter into the agreements described in this Subsection for a period ending on the earlier of (1) June 30, 2008 or (2) the date on which the Controller is no longer able to certify the availability of funds for any new guarantee agreement.

8. Default on Guarantees. The Human Rights Commission shall decertify any contractor that defaults on a loan or bond for which the City has provided a guarantee on the contractor's behalf. However, the Human Rights Commission may in its sole discretion refrain from such decertification upon a finding that the City has contributed to such default. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 174-00, File No. 001105, App. 7/14/2000; Ord. 255-00, File No. 001353, App. 11/3/2000; Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.11. PURCHASING CONTRACTS.

(A) In addition to the general findings set forth in Section 12D.A.2, and based upon the record before this Board, the Board finds that

the evidence before the Board relating to the award of prime contracts for commodities and general services for fiscal years 1992-93, 1993-94, 1994-95, 1996-97, 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for such contracts. The Board further finds that race-neutral measures employed by the City have not prevented such discriminatory practices from occurring.

(B) Contract awarding authorities shall apply all bid discounts as enumerated in Section 12D.A.9(A) to all commodities contracts the estimated cost of which exceeds \$2,500 and general services contracts the estimated cost of which exceeds \$10,000.

(C) In addition to the duties given the Office of Contract Administration elsewhere in this Section, the Office of Contract Administration shall maintain, with the assistance of the Director, a current list of MBEs and WBEs to provide each of those commodities or services subject to this ordinance that the Office of Contract Administration indicates are required by the City.

(D) The Office of Contract Administration shall also maintain a central office where all bids, requests for proposals and solicitations will be listed and kept current. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.12. ARCHITECT/ENGINEERING CONTRACTS.

(A) In addition to the general findings set forth in Section 12D.A.2, and based upon the record before this Board, the Board hereby finds that the evidence before this Board relating to the award of prime architect/engineering contracts for fiscal years 1992-93, 1993-94, 1994-95, 1996-97, 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City prime architect/engineering contracts. The Board further finds that race-neutral measures employed by the City have not prevented these discriminatory practices from occurring.

(B) Contract awarding authorities and architect/engineering selection panels shall apply all bid/rating discounts as enumerated in Section 12D.A.9(A) to all bids and proposals for architect/engineering contracts, the estimated cost of which exceeds \$10,000. Where Architect/Engineering contracts are formally bid, all consultants selection panels and awarding officers shall apply the bid/rating discounts to each stage of the selection process, e.g., qualifications, proposals and interviews. Minorities and women shall be included on consultant selection panels.

(C) The Director is empowered to take actions to ensure compliance with the provisions of this ordinance, including, without limitation, intervening in the selection process, by modifying the criteria used for selecting selection panelists or prime architect/engineering contractors to correct any contracting practices that hinder equal business opportunities for MBEs and WBEs. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.13. CONSULTANTS AND PROFESSIONAL SERVICES CONTRACTS.

(A) In addition to the general findings set forth in Section 12D.A.2, and based upon the record before this Board, the Board hereby finds that the evidence before the Board relating to the award of professional services contracts for fiscal years 1993-93, 1993-94, 1994-95, 1996-97, 1997-98 and 1998-2003 reflects that MBEs and WBEs continue to be disadvantaged by discriminatory practices when competing for City prime professional service contracts. Further, the Board finds that race-neutral measures employed by the City do not prevent such discrimination against MBEs and WBEs from occurring.

(B) Contract awarding authorities shall apply bid/ratings discounts as enumerated in Section 12D.A.9(A) to all bids and proposals as enumerated in Section 12D.A.9(A) to all professional service contracts the estimated cost of which exceeds \$10,000. Where professional service contracts are formally bid, all consultants selection panels and awarding officers shall apply the bid/rating discounts to each stage of the

selection process, e.g., qualifications, proposals and interviews. Minorities and women shall be included on consultant selection panels.

(C) The Director is empowered to take actions to ensure compliance with the provisions of this ordinance, including, without limitation, intervening in the selection process by modifying the criteria used to select selection panelists or prime professional service contractors to correct any contracting practice that hinders equal business opportunities for MBEs and WBEs. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.14. BEST EFFORTS REQUIRED FOR OTHER CONTRACTS.

All City departments, commissions, boards, officers and employees, in the performance of their duties, and in the award of leases, franchises, concessions, and other contracts not subject to the race and gender-conscious bid/ratings discounts of this ordinance, shall make best efforts to use the services of MBEs, WBEs and LBEs. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.15. EXCEPTIONS AND WAIVERS.

(A) The Director shall waive the race- and gender-conscious bid discounts and good faith efforts requirements of this ordinance under the following circumstances:

1. Whenever the Director finds, with the advice of the contract awarding authority and the Office of Contract Administration, that needed goods or services are available from a sole source that is not currently disqualified from doing business with the City.

2. If the contract awarding authority certifies in writing to the Director, prior to the Controller's contract certification, that (a) the contract is being awarded under emergency circumstances as described and defined in Administrative Code Section 6.60 or Administrative Code Section 21.15 and (b) (i) there is no time to apply bid/ratings discounts or establish subcon-

tracting goals, or (ii) there are no immediately available MBEs and WBEs that are capable of performing the emergency work.

(B) The Director shall waive the five-percent LBE bid discount for contracts in excess of \$5,000,000 whenever a contract awarding authority establishes that:

1. Sufficient qualified LBEs capable of providing the needed goods and services required by the contract are unavailable and sufficient qualified businesses located outside San Francisco capable of providing the needed goods and services required by the contract are available; or

2. The application of the five-percent LBE discount will result in significant additional costs to the City if the waiver of the bid discount is not granted.

(C) The bid/ratings discount provisions of this ordinance are not applicable to any contract estimated by the contract awarding authority to cost in excess of \$10,000,000. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.16. MONITORING AND COMPLIANCE.

(A) The Director shall monitor the City's progress toward achievement of the goals stated in Section 12D.A.3. The Director shall issue an exit report for any contract that includes MBE/WBE subcontracting participation or MBE/WBE prime contract participation as a joint venture partner. The purpose of this exit report is to ensure that prime contractors are complying with their commitments to use MBE and WBE subcontractors and MBE/WBEs are performing services as set forth in the bid/proposal and contract documents for the joint ventures.

(B) **Noncompliance By Contractors.** In cases in which the Director has cause to believe that a contractor has failed to comply with any of the requirements of this ordinance, rules and regulations adopted pursuant to this ordinance or contract provisions pertaining to MBE or WBE participation, the Director shall notify the contract awarding authority and shall attempt to resolve the noncompliance through conference

and conciliation. If the noncompliance cannot be resolved, the Director shall conduct an investigation and, where the Director so finds, issue a written finding of noncompliance. The Director's finding shall indicate whether the contractor acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with requirements of this ordinance, rules and regulations adopted pursuant to this ordinance or contract provisions pertaining to MBE or WBE participation. Where the Director finds that the contractor acted in good faith, after affording the contractor notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, after affording the contractor notice and an opportunity to be heard, the Director shall impose sanctions for each violation of the ordinance, rules and regulations adopted pursuant to this ordinance or contract provisions pertaining to MBE or WBE participation that may include:

1. Declaring the bidder or contractor nonresponsive and ineligible to receive the award of any pending contract;

2. Declaring the bidder or contractor to be an irresponsible bidder and disqualifying the bidder or contractor from eligibility for providing goods or services to the City for a period of up to five years, with a right of review and reconsideration by the Commission after two years upon a showing of corrective action indicating violations are not likely to recur;

3. If the bidder or contractor is a MBE, WBE and/or LBE, revoking that business' certification as a MBE, WBE and/or LBE;

4. Determining that the bidder or contractor has wilfully failed to comply with the provisions of this ordinance and, pursuant to the provision in the contract contemplated by Section 12D.A.9(D)(3) of this ordinance, calculating the liquidated damages for which the bidder or contractor shall be liable. Thereafter the Director shall send a written notice to the Controller, the Mayor and all contract awarding authorities overseeing any contract with the bidder or con-

tractor, that a determination of willful or bad-faith compliance has been made and that all payments due the bidder or contractor shall be withheld as agreed by the bidder or contractor and the City pursuant to Section 12D.A.9(D)(3).

(C) The bidder or contractor may appeal the Director's decision to the Commission. The Commission may sustain, reverse or modify the Director's findings and sanctions imposed or take such other action to effectuate the purpose of this ordinance. An appeal by a contractor under this subsection shall not stay the Director's findings.

(D) The Director may require such reports, information and documentation from contractors, subcontractors, bidders, contract awarding authorities, and heads of departments, divisions, and offices of the City as are reasonably necessary to determine compliance with the requirements of this ordinance.

(E) **Wilful Noncompliance by Contract Awarding Authority.** Whenever the Director finds after investigation that a contract awarding authority has willfully failed to comply with its duties pursuant to Section 12D.A.9, the Director shall transmit a written finding of noncompliance specifying the nature of the noncompliance, to the contract awarding authority, the Commission, the Mayor and this Board.

The Director shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the finding of noncompliance along with a finding that conciliation was attempted and failed to the Commission and this Board.

The finding of noncompliance shall be communicated to the Mayor for appropriate action to secure compliance pursuant to Section 12D.A.8(2).

(F) If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed with the City any materially false or misleading statement or report made in connection with this ordinance, the Director shall report that information to the City Attorney or the District Attorney for appropriate action. The Director shall be empowered to conduct an in-

vestigation and for each violation of this Subsection 12D.A.16(F), to impose sanctions as set forth in Subsection 12D.A.16. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.17. SUBCONTRACTOR PARTICIPATION GOALS; SUBCONTRACTING PROGRAM.

(A) The findings set forth in Section 12D.A.2 that relate to MBEs, WBEs are hereby incorporated by reference. This Board further finds that requiring prime contractors to demonstrate good faith efforts to use MBEs and WBEs as subcontractors on the City's contracts would offset some of the disadvantages that such businesses face and would promote competition by requiring prime contractors to solicit the participation of MBEs and WBEs that they might not otherwise solicit.

(B) For all public works/construction, architect/engineering, professional service, and general service contracts which the contract awarding authority reasonably anticipates will include subcontractor participation, prior to the solicitation of bids or proposals, the contract awarding authority shall provide the Director with a proposed job scope, and may submit written recommendations to the Director regarding MBE and WBE subcontractor participation goals to be set for the contract.

(C) Upon receipt of a proposed job scope and/or a written recommendation from a contracting awarding authority pursuant to Section 12D.A.9 (A)(3), the Director shall set the MBE and WBE participation goals for each public works/construction, architect/engineering, professional services, and general service contract based upon the following factors:

1. The extent of subcontracting opportunities presented by the contract;
2. The availability of MBE/WBE subcontractors capable of providing goods and services on the contract.
3. The Director shall set these goals within 10 working days of the date the Director receives from a contract awarding authority a proposed

job scope and/or written recommendation. If the Director fails to act within 10 days, and the contract awarding authority submitted to the Director recommended goals, the recommended goals shall be deemed approved by the Director, provided the goals are based upon the factors identified above.

(D) All solicitations for bidders on prime public works/construction, architect/engineering, professional services, and general service contracts shall require each bidder to do the following:

1. Demonstrate in its bid that it has used good-faith efforts to use MBE and WBE subcontractors; and

2. Identify the particular MBEs and WBEs subcontractors to be used in performing the contract, specifying for each the dollar value of the participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the bid.

Except as provided in Section 12D.A.17, bids not meeting the requirements of Section 12D.A.17 shall be declared nonresponsive.

(E) A contract awarding authority may request that the Director waive or reduce the MBE and WBE subcontractor participation goals on public works/construction, architect/engineering and professional services contracts by submitting the reasons therefor in writing to the Director prior to the solicitation of bids.

(F) A bidder or contractor may request that the Director waive or reduce the amount of MBE or WBE subcontractor participation goals on a public works/construction, architect/engineering, professional service, and general service contract by submitting in writing with its bid to the contract awarding authority the reasons therefor.

(G) The Director may grant the request for waiver or reduction made pursuant to Sections 12D.A.17(E) and (F) upon a determination that:

1. The reasonable and necessary requirements of the public works/construction, architect/engineering, professional service, and general

service contract render subcontracting or the participation of businesses other than the public works/bidder unfeasible;

2. Qualified MBEs and/or WBEs capable of providing the goods or services required by the contract are unavailable, despite the prime contractor's or the department's good-faith efforts to locate MBEs and WBEs to meet the participation goals; or

3. The available MBEs and WBEs have given price quotes that exceed competitive levels beyond amounts that can be attributed to cover costs inflated by the present effects of discrimination.

(H) Whenever the Director denies a contractor's request to waive or reduce the participation goals, the contractor may appeal that denial to the Commission. The Commission's decision on the request shall be final. In reviewing the Director's denial of a contractor's request to waive or to reduce participation goals, the Commission shall consider the extent of subcontracting opportunities presented by the contract and the availability of MBE/WBE subcontractors capable of providing goods and services on the contract.

The Commission may overrule, sustain or modify the Director's decision by applying the same standards that the Director is required to apply, as set forth in Subsection (G) above.

(I) The contract awarding authority shall require bidders or proposers on the contracts to contact MBEs and WBEs before listing them as subcontractors in the bid or proposal. The contract awarding authority shall declare bids or proposals that fail to satisfy this requirement nonresponsive.

(J) During the term of the contract, any failure to comply with the level of MBE and WBE subcontractor participation specified in the contract shall be deemed a material breach of contract. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.18. REPORTING AND REVIEW.

(A) **Reporting by the Director.** Commencing November 1, 2003 and no later than the first day of every third month thereafter, the Director shall issue a written report to this Board. That report shall document each City department's performance under the terms of this ordinance, including, among other things, each City department's progress in meeting its MBE/WBE goals and the success of each department's prime contractors complying with its best efforts obligations to meet MBE/WBE subcontracting goals. That report shall also state whether or not each City department has fully reported all data required by this ordinance or requested by HRC or the Controller.

1. Whenever the Director's report concludes that a department management's intentional disregard or negligent performance of obligations imposed by this ordinance has contributed to that department's failure to meet its prime contracting goals or the failure of its prime contractors to use their best efforts to meet their subcontracting goals or whenever the Director's report concludes that a City department has failed to provide any data required by this ordinance or requested by the HRC or the Controller, the Clerk of this Board shall schedule before the appropriate committee of the Board a hearing on that report. The Clerk shall also give notice of that hearing to the heads of the departments identified in the report and request the attendance of the heads of those departments at the committee hearing. The Clerk's notice shall inform the department heads that they must be prepared to respond to the Director's finding of intentional disregard and/or negligent performance and to explain what steps they intend to take to forestall repetition of the problems, identified in the Directors' report. The same procedure shall be followed whenever the Director's report identifies any department as having failed to meet its prime or subcontracting goals for three consecutive quarters. If the Director's report indicates that a City department has not met its goals for three consecutive quarters, HRC and the City department shall institute a

targeted program to remedy lack of participation by or in any affected ethnic group/gender/industry.

2. The Director shall report to the Commission all waivers acted upon pursuant to Section 12D.A.15. Such report shall be made on a monthly basis following the granting of the waiver.

(B) **Reporting by the Commission.** By July 1st of each fiscal year subject to this ordinance, the Commission shall submit an annual report to the Mayor and this Board on the progress of the City toward the goals stated in Section 12D.A.3 of this ordinance, together with an identification of problems and specific recommendations for: (1) discontinuing the race or gender-conscious bid discounts in those cases where the bid discounts have remedied the identified discrimination against MBEs and WBEs; and (2) improving the City's performance in remedying the identified discrimination against MBEs and WBEs.

(C) This Board shall act upon the Commission's recommendations by the first Board meeting of January in each fiscal year subject to this ordinance.

(D) By the last day of each fiscal year, all contract awarding authorities and City departments shall report annually to the Mayor on their progress in the preceding fiscal year toward the achievement of the MBE and WBE participation goals. (Added by Ord. 296-98, App. 10/5/98; amended by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.19. SEVERABILITY.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances. (Added by Ord. 296-98, App. 10/5/98)

**SEC. 12D.A.20. GENERAL WELFARE
CLAUSE.**

In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 134-03, File No. 030347, App. 6/1/2003. Former Sec. 12D.A.20 was added by Ord. 296-98, App. 10/5/98; renumbered by Ord. 134-03)

SEC. 12D.A.21. OPERATIVE DATE.

This ordinance shall become operative on July 1, 2003, and shall govern all contracts for which a bid or proposal has not been solicited by the operative date. (Formerly Sec. 12D.A.20, added by Ord. 296-98, App. 10/5/98; amended and renumbered by Ord. 134-03, File No. 030347, App. 6/1/2003)

SEC. 12D.A.22. EXPIRATION.

This ordinance shall expire June 30, 2008. If, however, the Commission, after conducting public hearings, finds that the purposes identified in Section 12D.A.3 have not yet been achieved, the Commission shall certify that finding to this Board no later than 120 days prior to the expiration date. Thereafter, upon finding a good cause, this Board may extend the ordinance for additional three-year periods. (Formerly Sec. 12D.A.21, added by Ord. 296-98, App. 10/5/98; amended and renumbered by Ord. 134-03, File No. 030347, App. 6/1/2003)

CHAPTER 12E: CITY EMPLOYEE'S SEXUAL PRIVACY ORDINANCE

- Sec. 12E.1. Short Title.
- Sec. 12E.2. Findings.
- Sec. 12E.3. Prohibited Practices.
- Sec. 12E.4. Exceptions to Prohibited Practices.

SEC. 12E.1. SHORT TITLE.

This ordinance shall be known and may be cited as the City Employee's Sexual Privacy Ordinance and may be cited as the Sexual Privacy Ordinance. (Added by Ord. 14-85, App. 1/11/85)

SEC. 12E.2. FINDINGS.

Consistent with the City's policies as set forth in Article 33 of the San Francisco Police Code proscribing discrimination in employment on the basis of sexual orientation, with San Francisco Charter Section 8.310, which requires that all employees be selected solely upon the basis of merit and fitness, and with California Constitution Article I, Section 1, which protects the inalienable right to privacy, the Board of Supervisors finds that the City and County of San Francisco, as an employer, has no reason to inquire into the sexual practices or habits of City employees or job applicants. (Added by Ord. 14-85, App. 1/11/85)

SEC. 12E.3. PROHIBITED PRACTICES.

Except as provided in Section 12E.4 of this ordinance, no officer, board, agency, commission or employee of the City and County of San Francisco may inquire into the sexual orientation, practices or habits of any City employee or job applicant. (Added by Ord. 14-85, App. 1/11/85)

SEC. 12E.4. EXCEPTIONS TO PROHIBITED PRACTICES.

No officer, board, agency, commission or employee of the City and County of San Francisco may inquire into the sexual practices or habits of

any City employee or job applicant unless (a) the Civil Service Commission first approves the questions, inquiries or screening procedures and specifically finds that there is a direct relationship between the questions, inquiries or screening procedures and the fitness of the City employee or job applicant for the position; or (b) the practices or habits inquired about are criminal under the laws of California; or (c) the practices or habits inquired about are relevant to an investigation being conducted by a local, State or Federal agency pursuant to a complaint of sexual harassment of a City employee or job applicant; or (d) the practices or habits inquired about are relevant to an investigation of misconduct being conducted by a department head. (Added by Ord. 14-85, App. 1/11/85)

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CHAPTER 12F: IMPLEMENTING THE MACBRIDE PRINCIPLES—NORTHERN IRELAND

- Sec. 12F.1. Intent.
- Sec. 12F.2. Findings.
- Sec. 12F.3. The MacBride Principles.
- Sec. 12F.4. Retirement Board and System.
- Sec. 12F.5. City Contracts.
- Sec. 12F.6. Research and Education.
- Sec. 12F.7. Severability.

SEC. 12F.1. INTENT.

This ordinance is set forth in order to accomplish the following objectives:

(a) To declare the City and County of San Francisco's opposition to any form of religious discrimination.

(b) To influence any discriminatory practices of American corporations doing business in Northern Ireland.

(c) To support efforts to effect peaceful change with regard to the situation in Northern Ireland by means that are prudent and responsible.

(d) To send legislation to the government of the United Kingdom stating that the people of San Francisco oppose religious discrimination and encouraging the government of the United Kingdom to take more pro-active measures in support of affirmative action.

(e) To express the support of the Board of Supervisors of the City and County of San Francisco for the implementation of the MacBride Principles by companies from the United States who conduct business in Northern Ireland. (Added by Ord. 107-89, App. 4/7/89)

SEC. 12F.2. FINDINGS.

The Board of Supervisors hereby makes the following findings:

(a) The people of the City and County of San Francisco recognize the moral responsibility of communities to continually take political steps

toward insuring that full human rights are obtained for all people and that religious discrimination is abolished.

(b) Northern Ireland is a sectarian state in which the rights of the Irish Catholic minority citizens have been severely restricted, particularly in terms of equal employment opportunities. The result of this religious discrimination has been an unemployment rate for Catholics which is more than twice that of the majority Protestants.

(c) The internationally recognized MacBride Principles are aimed at reducing employment discrimination in companies doing business in Northern Ireland, currently 26 of which are American firms. These MacBride Principles have been formally adopted by numerous state and local governments, including the States of New York, Connecticut, New Jersey, Massachusetts, Rhode Island and the Cities of New York, Philadelphia, Worcester, Hartford, Cleveland, Detroit, Chicago, Providence and Wilmington.

(d) The MacBride Principles are authorized by Dr. Sean MacBride, distinguished Irish statesman, Nobel Peace Prize laureate and founder of Amnesty International.

(e) The City of San Francisco has a tradition of regulating the use of public monies to ensure that purchases, deposits and investments are made consistent with moral standards in a manner which promotes public welfare.

(f) In keeping with this tradition, the Board of Supervisors seeks, through City policy, to influence those who do business in Northern Ireland.

(g) This legislation should not be construed to discourage future investment in Northern Ireland.

(h) A peaceful solution of the troubles in Northern Ireland depends on elimination of discrimination. (Added by Ord. 107-89, App. 4/7/89)

SEC. 12F.3. THE MACBRIDE PRINCIPLES.

The MacBride Principles call for affirmative action to be taken by institutions and companies doing business in Northern Ireland, by:

A. Increasing the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs.

A work force that is severely unbalanced may indicate prima facie that full equality of opportunity is not being afforded all segments of the community in Northern Ireland. Each signatory to the MacBride Principles must make every reasonable, lawful effort to increase the representation of underrepresented religious groups at all levels of its operations in Northern Ireland.

B. Providing adequate security for the protection of minority employees both at the workplace and while traveling to and from work.

While total security can be guaranteed nowhere today in Northern Ireland, each signatory to the MacBride Principles must make reasonable, good-faith efforts to protect workers against intimidation and physical abuse at the workplace. Signatories must also make reasonable, good-faith efforts to ensure that applicants are not deterred from seeking employment because of fear for personal safety at the workplace or while traveling to and from work.

C. Banning provocative or religious or political emblems from the workplace.

Each signatory to the MacBride Principles must make reasonable, good-faith efforts to prevent the display of provocative sectarian emblems at their plants in Northern Ireland.

D. Publicly advertising all job openings and making special recruitment efforts to attract applicants from underrepresented religious groups.

Signatories to the MacBride Principles must exert special efforts to attract employment applications from the sectarian community that is substantially underrepresented in the work force. This should not be construed to imply a diminution of opportunity for other applications.

E. Providing that layoff, recall and termination procedures should not, in practice, favor particular religious groups.

Each signatory to the MacBride Principles must make reasonable, good-faith efforts to ensure that layoff, recall and termination procedures do not penalize a particular religious group disproportionately. Layoff and termination practices that involve seniority solely can result in discrimination against a particular religious group if the bulk of employees with greatest seniority are disproportionately from another religious group.

F. Abolishing job reservations, apprenticeship restrictions and differential employment criteria which discriminate on the basis of religious or ethnic origin.

Signatories to the MacBride Principles must make reasonable, good-faith efforts to abolish all differential employment criteria whose effect is discrimination on the basis of religion. For example, job reservations and apprenticeship regulations that favor relatives of current or former employees can, in practice, promote religious discrimination if the company's work force has historically been disproportionately drawn from another religious group.

G. Developing training programs that will prepare substantial numbers of current minority employees for skilled jobs, including the expansion of existing programs and the creation of new programs to train, upgrade and improve the skills of minority employees.

This does not imply that such programs should not be open to all members of the work force equally.

H. Establishing procedures to assess, identify and actively recruit minority employees with potential for further advancement.

This section does not imply that such procedures should not apply to all employees equally.

I. Appointing a senior management staff member to oversee the company's affirmative action efforts and the setting up of timetables to carry out affirmative action principles.

In addition to the above, each signatory to the MacBride Principles is required to report annually to an independent monitoring agency on its progress in the implementation of these principles. (Added by Ord. 107-89, App. 4/7/89)

SEC. 12F.4. RETIREMENT BOARD AND SYSTEM.

The Retirement Board of the City and County of San Francisco is hereby commended for its efforts in support of the MacBride Principles (with the exception of Principle E, as listed in Section 12F.3 of this Code) and the addition of the Principles to the Social Investment Policy of the Retirement Board. The Retirement Board is encouraged to take further steps to support these Principles by moving to the next level of the Social Investment Procedures which will be to actively promote proxies which would conform with the policy position of the Retirement Board, and by encouraging businesses with whom it deals, and in whom it invests, likewise to support the MacBride Principles. (Added by Ord. 107-89, App. 4/7/89)

SEC. 12F.5. CITY CONTRACTS.

All contracts entered into by a department head or officer empowered by law to enter into contracts on behalf of the City and County for public works or improvements to be performed, for a franchise, concession or lease of property, or for goods and services or supplies to be purchased at the expense of the City and County, or to be paid out of monies deposited in the Treasury or out of trust monies under the control or collected by the City and County, shall contain a statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, and encouraging them to abide by the MacBride Principles. Each of these statements shall also urge San Francisco companies to do business with corporations that abide by the MacBride Principles. Above the signature line for use by contractors on each contract shall be placed an acknowledgment confirming that they have read and understood the City's statement urging companies doing business in Northern Ireland to move toward resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. (Added by Ord. 107-89, App. 4/7/89)

SEC. 12F.6. RESEARCH AND EDUCATION.

(a) The Board of Supervisors shall send, and the Mayor is asked to join in, a letter to all United States corporations listed by the Investment Responsibility Research Center as doing business in Northern Ireland. This letter shall state the City's support for the MacBride Principles and urge the corporations to abide by the Principles. The letter shall ask that each recipient company sign and return to the Clerk of the Board of Supervisors a statement agreeing to the Principles. Each letter will clearly state that the Board shall evaluate the issue further in one year, and may amend the City's policies regarding implementation of the MacBride Principles in light of the progress made with regard to the elimination of employment inequities in Northern Ireland.

(b) The Clerk of the Board shall report to the Board of Supervisors by July 1, 1989 and by January 1, 1990 on the letters that were sent as required in the immediately preceding paragraph, and on any responses received. The Controller shall report to the Board of Supervisors by July 1, 1989 and by January 1, 1990 on the number of companies with whom the City is doing business who are conducting business in Northern Ireland.

(c) The City Treasurer shall send a statement to banks with whom the City has deposits and encourage them to do business with corporations that abide by the MacBride Principles.

(d) The Board of Supervisors, through the Clerk of the Board, shall send a letter to the government of the United Kingdom conveying a copy of this legislation and expressing opposition to religious discrimination. (Added by Ord. 107-89, App. 4/7/89)

SEC. 12F.7. SEVERABILITY.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the

remainder of this ordinance, or the validity of its
application to other persons or circumstances.
(Added by Ord. 107-89, App. 4/7/89)

CHAPTER 12G: PROHIBITION ON USE OF PUBLIC FUNDS FOR POLITICAL ACTIVITY BY RECIPIENTS OF CITY CONTRACTS, GRANTS, AND LOANS

- | | | |
|-------------|------------------------|--|
| Sec. 12G.1. | Prohibition. | from receiving any City contract, grant agree- |
| Sec. 12G.2. | Audits. | ment, or loan agreement. (Added by Proposition |
| Sec. 12G.3. | Rules and Regulations. | Q, 11/5/2002) |
| Sec. 12G.4. | Penalties. | |

SEC. 12G.1. PROHIBITION.

No funds appropriated by the City and County of San Francisco for any contract, grant agreement, or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or ballot measure. (Added by Proposition Q, 11/5/2002)

SEC. 12G.2. AUDITS.

The Controller shall annually select for audit at least ten (10) persons or entities that enter into contracts, grant agreements, or loan agreements with the City in order to ensure compliance with this section. (Added by Proposition Q, 11/5/2002)

SEC. 12G.3. RULES AND REGULATIONS.

(a) The Controller shall promulgate any rules and regulations necessary or appropriate for the implementation of this section.

(b) All contracts, grant agreements, and loan agreements shall incorporate this Chapter by reference. (Added by Proposition Q, 11/5/2002)

SEC. 12G.4. PENALTIES.

If the Controller determines that any recipient of a contract, grant agreement, or loan agreement has violated this Chapter, the violation shall be deemed a material breach of the contract, grant agreement, or loan agreement and the recipient of the contract, grant agreement, or loan agreement shall be barred for two years

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CHAPTER 12H: IMMIGRATION STATUS

- Sec. 12H.1. City and County of Refuge.
- Sec. 12H.2. Use of City Funds Prohibited.
- Sec. 12H.2-1. Chapter Provisions Inapplicable to Persons Convicted of Certain Crimes.
- Sec. 12H.3. Clerk of Board to Transmit Copies of This Chapter; Informing City Employees.
- Sec. 12H.4. Enforcement.
- Sec. 12H.5. City Undertaking Limited to Promotion of General Welfare.
- Sec. 12H.6. Severability.

SEC. 12H.1. CITY AND COUNTY OF REFUGE.

It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2. USE OF CITY FUNDS PROHIBITED.

No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision. The prohibition set forth in this Chapter shall include, but shall not be limited to:

(a) Assisting or cooperating, in one's official capacity, with any Immigration and Naturalization Service (INS) investigation, detention, or arrest procedures, public or clandestine, relating to alleged violations of the civil provisions of the federal immigration law.

(b) Assisting or cooperating, in one's official capacity, with any investigation, surveillance or gathering of information conducted by foreign

governments, except for cooperation related to an alleged violation of City and County, State or federal criminal laws.

(c) Requesting information about, or disseminating information regarding, the immigration status of any individual, or conditioning the provision of services or benefits by the City and County of San Francisco upon immigration status, except as required by federal or State statute or regulation, City and County public assistance criteria, or court decision.

(d) Including on any application, questionnaire or interview form used in relation to benefits, services or opportunities provided by the City and County of San Francisco any question regarding immigration status other than those required by federal or State statute, regulation or court decision. Any such questions existing or being used by the City and County at the time this Chapter is adopted shall be deleted within sixty days of the adoption of this Chapter. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.2-1. CHAPTER PROVISIONS INAPPLICABLE TO PERSONS CONVICTED OF CERTAIN CRIMES.

Nothing in this Chapter shall prohibit, or be construed as prohibiting, a law enforcement officer from identifying and reporting any person pursuant to State or federal law or regulation who is in custody after being booked for the alleged commission of a felony and is suspected of violating the civil provisions of the immigration laws. In addition, nothing in this Chapter shall preclude any City and County department, agency, commission, officer or employee from (a) reporting information to the INS regarding an individual who has been booked at any county jail facility, and who has previously been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under State law; (b) cooperating with an INS request for information re-

garding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law; or (c) reporting information as required by federal or state statute, regulation or court decision, regarding an individual who has been convicted of a felony committed in violation of the laws of the State of California, which is still considered a felony under state law. For purposes of this Section, an individual has been "convicted" of a felony when: (a) there has been a conviction by a court of competent jurisdiction; and (b) all direct appeal rights have been exhausted or waived; or (c) the appeal period has lapsed.

However, no officer, employee or law enforcement agency of the City and County of San Francisco shall stop, question, arrest or detain any individual solely because of the individual's national origin or immigration status. In addition, in deciding whether to report an individual to the INS under the circumstances described in this Section, an officer, employee or law enforcement agency of the City and County of San Francisco shall not discriminate among individuals on the basis of their ability to speak English or perceived or actual national origin.

This Section shall not apply in cases where an individual is arrested and/or convicted for failing to obey a lawful order of a police officer during a public assembly or for failing to disperse after a police officer has declared an assembly to be unlawful and has ordered dispersal.

Nothing herein shall be construed or implemented so as to discourage any person, regardless of immigration status, from reporting criminal activity to law enforcement agencies. (Added by Ord. 282-92, App. 9/4/92; amended by Ord. 238-93, App. 8/4/93)

SEC. 12H.3. CLERK OF BOARD TO TRANSMIT COPIES OF THIS CHAPTER; INFORMING CITY EMPLOYEES.

The Clerk of the Board of Supervisors shall send copies of this Chapter, including any future amendments thereto that may be made, to every department, agency and commission of the City

and County of San Francisco, to California's United States Senators, and to the California Congressional delegation, the Commissioner of the INS, the United States Attorney General, and the Secretary of State and the President of the United States. Each appointing officer of the City and County of San Francisco shall inform all employees under her or his jurisdiction of the prohibitions in this ordinance, the duty of all of her or his employees to comply with the prohibitions in this ordinance, and that employees who fail to comply with the prohibitions of the ordinance shall be subject to appropriate disciplinary action. Each city and county employee shall be given a written directive with instructions for implementing the provisions of this Chapter. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.4. ENFORCEMENT.

The Human Rights Commission shall review the compliance of the City and County departments, agencies, commissions and employees with the mandates of this ordinance in particular instances in which there is question of non-compliance or when a complaint alleging non-compliance has been lodged. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.5. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is assuming an undertaking only to promote the general welfare. This Chapter is not intended to create any new rights for breach of which the City is liable in money damages to any person who claims that such breach proximately caused injury. This section shall not be construed to limit or proscribe any other existing rights or remedies possessed by such person. (Added by Ord. 375-89, App. 10/24/89)

SEC. 12H.6. SEVERABILITY.

If any part of this ordinance, or the application thereof, is held to be invalid, the remainder of this ordinance shall not be affected thereby, and this ordinance shall otherwise continue in

full force and effect. To this end, the provisions of this ordinance, and each of them, are severable.
(Added by Ord. 375-89, App. 10/24/89)

San Francisco - Administrative Code

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CHAPTER 12I: [RESERVED]

Sec. 12I.1.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.2.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 278-96, App. 7/3/96; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.3.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.4.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.5.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 304-92, App. 9/29/92; Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.6.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.7.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.8.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 409-97, App. 10/31/97; Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.10.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12I.11.

(Added by Ord. 391-90, App. 12/6/90; amended by Ord. 38-01, File No. 010010, App. 3/16/2001; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

San Francisco - Administrative Code

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CHAPTER 12J: CITY BUSINESS WITH BURMA PROHIBITED

Sec. 12J.1.	Findings.
Sec. 12J.2.	Definitions.
Sec. 12J.3.	Contractual Services, Real and Personal Property Agreements.
Sec. 12J.4.	Purchase of Commodities.
Sec. 12J.5.	Rules and Regulations.
Sec. 12J.6.	Public Records.
Sec. 12J.7.	Penalties.
Sec. 12J.8.	Implementation Reports.
Sec. 12J.9.	Severability.
Sec. 12J.10.	Suspension.

SEC. 12J.1. FINDINGS.

(a) Because the quality of life of all people is diminished when peace and justice are not fully present in the world, local communities have the responsibility to take positive steps to support the rule of law and to help end injustices and egregious violations of human rights wherever they may occur.

(b) The nation of Burma (Myanmar) has institutionalized torture and rape as political instruments, and embarked upon campaigns of forcible relocation, forced labor and slavery, and persecution of ethnic minorities, and other human rights violations, thereby denying the majority of the population the right to participate in the political process, to benefit from the system of justice, or to exercise economic rights.

(c) The military regime of Burma (Myanmar) has implemented a reign of terror preventing political participation by various methods, including (1) ignoring the results of the 1990 elections in which pro-democracy candidates received over 60 percent of the vote and over 80 percent of the seats in the government; (2) forcing the imprisonment, death, or exile of many of these candidates; (3) failing to convene a Constitutional Convention as promised in 1990; (4) imposing martial law barring freedom of the press and gatherings of more than five people and declaring that "martial law means no law at

all"; (5) forcibly relocating hundreds of thousands of people, including those in neighborhoods with strong pro-democracy support, ethnic minorities including the Muslim Rohingyas, and indigenous groups in areas rich with extractive resources, to locales in which malaria and other diseases are rampant and where food, water and sewerage are scarce, if available at all; (6) barring all labor and trade union organizing and implementing forcible labor for the purposes of road and tourist site construction, portering of military goods and human mine-sweeping; (7) pressuring the governments of Thailand and Bangladesh to force refugees back to Burma (Myanmar) in exchange for continuing sales of resources such as timber, fishing concessions and natural gas; (8) harming men, women and children of Burma by pillaging villages and townships and by attacking and burning refugee camps; and (9) persecuting Buddhist monks for their support of pro-democratic organizing.

(d) The military regime is currently attempting to enhance its standing in the international community and to increase the flow of foreign money and investment through various means, including the development of massive natural gas fields offshore and the construction of a gas pipeline through areas traditionally held by ethnic minorities, forcing their displacement.

(e) The rightfully elected leadership of Burma, the National Coalition Government of the Union of Burma (NCGUB), winners of the 1990 elections, living in exile, have called upon the world community to impose economic and arms sanctions against the State Law and Order Restoration Council (SLORC). The NCGUB's call for sanctions is supported by Nobel Peace Prize Laureates Oscar Arias Sanchez, the Dalai Lama, Mairead McGuire, Archbishop Desmond Tutu, Betty Williams, Adolpho Perez Esquivel and others, and by the AFL-CIO.

(f) The United Nations and elected representatives of the United States, including President Clinton, the Senate, and the House of Representatives, have repeatedly shown support for the peoples of Burma, urging SLORC to release all political prisoners, to respect the results of the May 1990 elections and to commit to genuine democratic reforms. Section 138 of the U.S. Customs and Trade Act of 1990 instructs the president to impose comprehensive trade sanctions against Burma's military regime. Section 2651 (United States Policy Concerning the Dictatorship in Burma) of the sanctions amendment to the 1996 foreign aid bill, H.R. 1564, has been approved by the Senate and bans all U.S. trade with, investment in and travel to Burma (Myanmar).

(g) The United States Supreme Court has upheld the power of a municipality to make legitimate economic decisions without being subject to the restraints of the Commerce Clause when it participates in the marketplace as opposed to exerting its regulatory powers.

(h) The City and County of San Francisco declares the right to measure the moral character of its business partners in determining with whom it seeks to have business relations or to whom it grants privileges.

(i) The system of oppression by SLORC is illegal and contrary to international laws and covenants. The conduct of the SLORC being morally repugnant to the citizens of San Francisco, the Board of Supervisors does hereby set forth a municipal policy prohibiting contracts for personal services or the construction of public works or improvements with those who do business in Burma (Myanmar), and prohibiting the purchase of any commodities produced in Burma (Myanmar), or provided by those who do business, maintain facilities, or are organized under SLORC's rule. (Added by Ord. 159-96, App. 4/24/96; amended by Ord. 251-97, App. 6/27/97)

SEC. 12J.2. DEFINITIONS.

As used in this Chapter, the following words and phrases shall have the meanings indicated herein:

(a) "City" or "City and County" shall mean the City and County of San Francisco, or any department, board, commission or agency thereof.

(b) "Commodities" shall include, but not be limited to, goods, commodities, materials, supplies, vehicles, machinery, and equipment.

(c) "Contract" shall mean an agreement with a nongovernmental entity for commodities, contractual services or contracts for the construction of public works or improvements to be purchased at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City and County.

(d) "Contracting officer" shall mean that officer or employee of the City authorized under the Charter, the Administrative Code or the Municipal Code, to enter into a contract on behalf of the City.

(e) "Contractual services," for purposes of Section 12J.3, shall mean investment counseling, underwriting, acting as a trustee or escrow agent, providing any consulting advice or assistance under a professional or personal service contract, and services provided pursuant to any contract subject to Charter Section 10.104(15). "Contractual services" shall not include purchase orders, blanket purchase orders or other agreements of the City for the purchase of a commodity under Section 12J.4.

(f) "The government of Burma (Myanmar)" or "Burma (Myanmar)" shall mean any public or quasi-public entity sanctioned by the State Law and Order Restoration Council ("SLORC") operating within Burma, including, but not limited to, municipal, provincial, or other governing bodies operating as proxy of SLORC, including all departments and agencies of such bodies, public utilities, public facilities, or any national corporation in which the public sector of Burma (Myanmar) has a financial interest or operational responsibilities.

(g) "Prohibited person or entity" shall mean any private person or entity designated by the Investor Responsibility Research Center ("IRRC") as having investments or employees in Burma, or any private person or entity that licenses any person or entity organized under the laws of Burma (Myanmar) to produce and market its products. The Purchaser (1) shall develop a list

of prohibited persons or entities pursuant to the terms of this paragraph, and (2) shall have the authority to delete from such list any person or entity designated by the IRRC as having investments or employees in Burma if any such entity demonstrates to the Purchaser's satisfaction that such designation is erroneous.

(h) "Purchaser" shall mean the Purchaser of the City and County or any authorized representative of that official. (Added by Ord. 159-96, App. 4/24/96; amended by Ord. 251-97, App. 6/27/97)

SEC. 12J.3. CONTRACTUAL SERVICES, REAL AND PERSONAL PROPERTY AGREEMENTS.

(a) **Prohibited Transactions.** The City shall not enter into, amend, modify or renew any agreement for (i) contractual services, (ii) public works or improvements, or (iii) any lease, permit, license or other agreement for the use or sale of the City's real or personal property, with any prohibited person or entity.

(b) **Contract Condition.** Each contract for services or for the use or sale of the City real or personal property shall include as a material condition to that agreement the following paragraph:

Contractor is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The City reserves the right to terminate this contract for default if the contractor violates the terms of this clause.

(c) A person or entity shall not be a prohibited person or entity under Subsection (a) above so long as such person or entity is only performing contractual services necessary to complete a specific project in Burma (Myanmar) initiated prior to May 1, 1996, so long as the scope of the services is not increased by any modification of an existing project contract after May 1, 1996,

and provided that the term, or remaining term of the services contract is not greater than five years from May 1, 1996.

(d) Nonapplicability; Findings; Alternate Selection.

(1) Section 12J.3 shall not apply to bid packages advertised and made available to the public or any competitive and sealed bids received by the City or to contracts for contractual services entered into prior to May 1, 1996.

(2) The provisions of Section 12J.3 shall not apply to contracts for \$10,000 or less; to leases, permits, licenses or other agreements for the use of the City's real or personal property entered into prior to May 1, 1996, or having a monthly rental payment of \$100 or less or having a duration of 30 days or less in any calendar year, whether by single or cumulative instrument; to any transaction allowing access to or use of City real property upon purchase of an admission ticket; or to permits for the use of City streets for temporary periods of construction of improvements on abutting private real property; to leases, permits, licenses or other agreements that renew existing easements or rights-of-way over real property owned by the City between the City and a party holding the easement or right-of-way as of May 1, 1996, provided that the agreements do not permit the building of new facilities on City land or a change in the character of its use.

(3) Section 12J.3 shall not apply to any amendment, modification or renewal of a contract entered into prior to May 1, 1996 where necessary for the timely completion of a project and not involving an increase in the total moneys to be paid by the City under that contract.

(4) The provisions of Section 12J.3 shall not apply where the contracting officer finds that:

(A) No person or entity doing business in the City which is not a prohibited person or entity under Section 12J.2(g) is capable of performing the desired function(s); or

(B) The City will incur a financial loss which in the opinion of the contracting officer would violate his or her fiduciary duties. For purposes of this Section, prima facie evidence of a breach

of fiduciary duty shall mean a financial loss of 10 percent of a contract's value or \$10,000, whichever is less; or

(C) The inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or contract; or

(D) The inclusion or application of such provisions will violate or be inconsistent with the laws, rules or regulations of the State of California or the United States of America. (Added by Ord. 159-96, App. 4/24/96; amended by Ord. 251-97, App. 6/27/97)

SEC. 12J.4. PURCHASE OF COMMODITIES.

(a) Prohibited Transactions.

(1) The City shall not purchase any commodity from the government of Burma (Myanmar), or a prohibited person or entity.

(2) The City shall not purchase any commodity made in Burma (Myanmar). A commodity shall be considered made in Burma (Myanmar) if it is manufactured, produced or grown in Burma (Myanmar), or if further work or material manufactured, produced or grown in Burma (Myanmar) is added to a commodity which effects a substantial transformation of that commodity. Interpretation of this Section shall be consistent with statutes and regulations of the United States regarding markings of commodities by country of origin pursuant to 19 CFR 134.

(3) Performing contractual services necessary to complete a specific project in Burma (Myanmar) initiated prior to May 1, 1996, shall not be deemed doing business in Burma (Myanmar), so long as the scope of the services is not increased by any modification of any existing project contract after May 1, 1996, and provided that the term, or remaining term of the services contract is not greater than five years from May 1, 1996.

(b) Contract Condition. Each contract for the supply of a commodity to the City shall include as a material condition to that agreement the following paragraph in the contract:

Seller is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(g) of the San Francisco Administrative Code. The item(s) sold in this contract (purchase order) to the City and County of San Francisco is (are) not made in Burma (Myanmar) as defined in Section 12J.4(a) of the San Francisco Administrative Code. The City reserves the right to terminate this contract for default if the contractor furnishes items made in Burma (Myanmar).

(c) Exceptions. This Section shall not apply to:

(1) Any binding contractual obligation for purchase of commodities entered into prior to May 1, 1996;

(2) The purchase of any commodity for which Burma (Myanmar) is the only source; or any commodity made outside Burma (Myanmar) which cannot be obtained except through a prohibited person or entity;

(3) Any contract for the purchase of commodities for \$10,000 or less;

(4) Where the contracting officer finds that no person or entity doing business in the City that is not a prohibited person or entity is capable of providing the desired commodity;

(5) Any contract, purchase order or blanket purchase order wherein the City will incur a financial loss which in the opinion of the contracting officer would violate his or her fiduciary duties. For purposes of this Section, prima facie evidence of a breach of fiduciary duty shall mean a financial loss of 10 percent of a contract's value or \$10,000, whichever is less; or

(6) Where the inclusion or application of such provisions will violate or be inconsistent with the terms or conditions of a grant, subvention or contract with an agency of the State of California or the United States or the instruc-

tions of an authorized representative of any such agency with respect to any such grant, subvention or contract. (Added by Ord. 159-96, App. 4/24/96; amended by Ord. 251-97, App. 6/27/97)

SEC. 12J.5. RULES AND REGULATIONS.

(a) The Purchaser or department head of a department, board or commission authorized to sell or lease City-owned property, whichever is appropriate, may promulgate any rules and regulations necessary or appropriate to carry out the purposes and requirements of this ordinance. Each City department, board and commission shall cooperate with, and provide in writing to the Purchaser, all information necessary for the Purchaser to promulgate such rules and regulations.

(b) All contracts and other similar written agreements shall incorporate this Chapter by reference whenever applicable and shall provide that the failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract. (Added by Ord. 159-96, App. 4/24/96)

SEC. 12J.6. PUBLIC RECORDS.

All reports prepared pursuant to the requirements of this ordinance shall be made available for public inspection except those prepared for purposes of litigation. (Added by Ord. 159-96, App. 4/24/96)

SEC. 12J.7. PENALTIES.

(a) Whenever a person or entity being considered for a contract or under contract with the City makes representations regarding its involvement in Burma (Myanmar) that are found by the City after an investigation by the contracting officer and the City Attorney to be false, the City shall have the authority to impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this Chapter which shall include, but are not limited to:

- (1) Refusal to certify the award of a contract;
- (2) Order the suspension of a contract;

(3) Order the withholding of funds;

(4) Disqualification of a bidder or contractor from eligibility for providing commodities or services to the City for a period not to exceed five years, with a right to review and reconsideration by the contracting City department after two years upon a showing of corrective action indicating violations are not likely to reoccur.

(b) All contracts to which this ordinance applies shall provide that in the event any bidder or contractor fails to comply in good faith with any of the provisions of this Chapter the bidder or contractor shall be liable for liquidated damages for each violation in an amount equal to the bidder's or contractor's net profit on the contract, or 10 percent of the total amount of the contract or \$1,000 whichever is greatest. All contracts shall also contain a provision whereby the bidder or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any moneys due to the bidder or contractor from any City contract. (Added by Ord. 159-96, App. 4/24/96; amended by Ord. 251-97, App. 6/27/97)

SEC. 12J.8. IMPLEMENTATION REPORTS.

The Purchaser shall provide a written report on the implementation of this ordinance to the Board of Supervisors as follows:

- (1) At the first Board of Supervisors meeting held one year after this Chapter has been in effect; and
- (2) Annually thereafter.

Each City department, board and commission shall provide in writing all information requested by the Purchaser as necessary to prepare such reports. (Added by Ord. 159-96, App. 4/24/96; amended by Ord. 251-97, App. 6/27/97)

SEC. 12J.9. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding

shall not affect the validity of the remaining portions thereof. (Added by Ord. 159-96, App. 4/24/96)

SEC. 12J.10. SUSPENSION.

The provisions of Chapter 12J, prohibiting the City from doing business with Burma, are hereby suspended. Until enactment of legislation withdrawing this suspension, the provisions of Chapter 12J shall have no force or effect and no City officer or employee shall enforce or implement the provisions of Chapter 12J. (Added by Ord. 287-00, File No. 001355, App. 12/22/2000)

**CHAPTER 12K: LOCAL IMPLEMENTATION OF THE UNITED NATIONS CONVENTION
ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN
(CEDAW)**

- Sec. 12K.1. Findings.
- Sec. 12K.2. Definitions.
- Sec. 12K.3. Local Principles of CEDAW.
- Sec. 12K.4. Implementation of the Principles of CEDAW in San Francisco.
- Sec. 12K.5. CEDAW Task Force.
- Sec. 12K.6. Summary of CEDAW.

SEC. 12K.1. FINDINGS.

The Board of Supervisors of the City and County of San Francisco hereby finds and declares as follows:

(a) The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), an international human rights treaty, provides a universal definition of discrimination against women and brings attention to a whole range of issues concerning women's human rights. Countries that ratify CEDAW are mandated to condemn all forms of discrimination against women and girls and to ensure equality for women and girls in the civil, political, economic, social and cultural arenas. The United Nations General Assembly adopted CEDAW in 1979 and President Carter signed the treaty on behalf of the United States in 1980, but the United States Senate has not yet ratified CEDAW.

(b) On October 30, 1997, a consortium of community organizations, the Commission on the Status of Women, the Human Rights Commission and Board of Supervisors President Barbara Kaufman held a hearing on the local implications of CEDAW. The testimony at the hearing demonstrated that women and girls continue to face discrimination in the areas of economic development and employment, violence against women and girls, and health care. On November 10, 1997, the Board of Supervisors adopted Resolution No. 1021-97, supporting the local imple-

mentation of the underlying principles of CEDAW and urging the United States Senate to ratify CEDAW. On November 17, 1997, Mayor Willie Brown approved Resolution No. 1021-97.

(c) There is a continued need for the City and County of San Francisco to protect the human rights of women and girls by addressing discrimination, including violence, against them and to implement, locally, the principles of CEDAW. Adherence to the principles of CEDAW on the local level will especially promote equal access to and equity in health care, employment, economic development and educational opportunities for women and girls and will also address the continuing and critical problems of violence against women and girls. There is a need to analyze the operations of City departments, policies and programs to identify discrimination in, but not limited to, employment practices, budget allocation and the provision of direct and indirect services and, if identified, to remedy that discrimination. In addition, there is a need to work toward implementing the principles of CEDAW in the private sector.

(d) There is a need to strengthen effective national and local mechanisms, institutions and procedures and to provide adequate resources, commitment and authority to: (1) advise on the impact of all government policies on women and girls; (2) monitor the situation of women comprehensively; and (3) help formulate new policies and effectively carry out strategies and measures to eliminate discrimination. The Commission on the Status of Women shall be designated as the implementing and monitoring agency of CEDAW in the City and County of San Francisco.

(e) In April 1998, the City and County of San Francisco originally enacted this ordinance implementing the principles underlying CEDAW. In 1998, City officials and community represen-

tatives formed a CEDAW Task Force. In 1999, the CEDAW Task Force and the Commission on the Status of Women developed "Guidelines for a Gender Analysis," a set of guidelines to assist City departments in implementing the local principles of CEDAW. In 1999, two City departments used the Guidelines to analyze their departments. The resulting report, "A Gender Analysis: Implementing the Convention on the Elimination of All Forms of Discrimination against Women" (November 1999) demonstrated a continuing need to work on elimination of discrimination against women. The Report further revealed that discrimination based on gender is interconnected and often overlaps with discrimination based on race and other criteria.

(f) The Report called on the City and County of San Francisco and its departments to:

(1) Increase education in human rights with a gender perspective;

(2) Expand the collection of data disaggregated by gender, race and other traits; and

(3) Create a more fair and equitable workplace by increasing effective recruitment efforts for a diverse workforce, providing meaningful family friendly policies to retain employees and increasing professional development and training opportunities for all employees.

The Report revealed the need to analyze policies, procedures and programs on a Citywide, in addition to, department level. Both the Report and the department human rights trainings revealed the need to consider the intersection of gender and race in particular recognizing the unique experiences of women of color. (Added by Ord. 128-98, App. 4/13/98; amended by Ord. 325-00, File No. 001920, App. 12/28/2000)

SEC. 12K.2. DEFINITIONS.

As used in this Article, the following words and phrases shall have the meanings indicated herein:

(a) "City or City and County" shall mean the City and County of San Francisco.

(b) "Commission" shall mean the Commission on the Status of Women.

(c) "Disaggregated data" shall mean information collected and analyzed by enumerated categories in order to identify the disparities existing between women and men. These categories shall include, to the extent permitted by law, sex, race, immigration status, parental status, language, sexual orientation, disability, age and other attributes.

(d) "Discrimination against women" shall include, but not be limited to, any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty by family, community or government.

(e) "Gender" shall mean the way society constructs the difference between women and men, focusing on their different roles, responsibilities, opportunities and needs, rather than their biological differences.

(f) "Gender analysis" shall mean an examination of the cultural, economic, social, civil, legal and political relations between women and men within a certain entity, recognizing that women and men have different social roles, responsibilities, opportunities and needs and that these differences, which permeate our society, affect how decisions and policy are made.

(g) "Gender equity" shall mean the redress of discriminatory practices and establishment of conditions enabling women to achieve full equality with men, recognizing that needs of women and men may differ, resulting in fair and equitable outcomes for both.

(h) "Human rights" shall mean the rights every individual possesses that are intended to improve the conditions in society that protect each person's dignity and well-being and the humanity of all people.

(i) "Racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. (Added by Ord. 325-00, File No. 001920, App. 12/28/2000. Former Sec. 12K.2 re-numbered as Sec. 12K.3 by Ord. 325-00)

SEC. 12K.3. LOCAL PRINCIPLES OF CEDAW.

It shall be the goal of the City to implement the principles underlying CEDAW, listed in Section 12K.6 by addressing discrimination against women and girls in areas including economic development, violence against women and girls and health care. In implementing CEDAW, the City recognizes the connection between racial discrimination, as articulated in the International Convention on the Elimination of All Forms of Racial Discrimination, and discrimination against women. The City shall ensure that the City does not discriminate against women in areas including employment practices, allocation of funding and delivery of direct and indirect services. The City shall conduct gender analyses, as described in Section 12K.4, to determine what, if any, City practices and policies should change to implement the principles of CEDAW.

(a) Economic Development.

(1) The City shall take all appropriate measures to eliminate discrimination against women and girls in the City of San Francisco in employment and other economic opportunities, including, but not limited to, ensuring:

(A) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment and the right to receive access to and vocational training for nontraditional jobs;

(B) The right to promotion, job security and all benefits and conditions of service, regardless of parental status, particularly encouraging the

appointment of women to decision making posts, City revenue generating and managing commissions and departments, and judicial positions;

(C) The right to equal remuneration, including benefits and to equal pay in respect to work of equal value;

(D) The right to the protection of health and safety in working conditions, including supporting efforts not to purchase sweatshop goods, regular inspection of work premises, and protection from violent acts at the workplace.

(2) The City shall encourage and, where possible, fund the provisions of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities, paid family leave, family-friendly policies and work-life balance.

(3) The City shall encourage the use of public education and all other available means to urge financial institutions to facilitate women's access to bank accounts, loans, mortgages, and other forms of financial services.

(b) Violence Against Women and Girls.

(1) The City shall take and diligently pursue all appropriate measures to prevent and redress sexual and domestic violence against women and girls, including, but not limited to:

(A) Police enforcement of criminal penalties and civil remedies, when appropriate;

(B) Providing appropriate protective and support services for survivors, including counseling and rehabilitation programs;

(C) Providing gender-sensitive training of City employees regarding violence against women and girls, where appropriate; and

(D) Providing rehabilitation programs for perpetrators of violence against women or girls, where appropriate.

The City shall not discriminate on the basis of race, ethnicity, culture, language or sexual orientation, when providing the above supportive services.

(2) It shall be the goal of the City to take all necessary measures to protect women and girls from sexual harassment in their places of em-

ployment, school, public transportation, and any other places where they may be subject to harassment. Such protection shall include streamlined and rapid investigation of complaints.

(3) Prostitutes are especially vulnerable to violence because their legal status tends to marginalize them. It shall be the policy of San Francisco that the Police Department diligently investigate violent attacks against prostitutes and take efforts to establish the level of coercion involved in the prostitution, in particular where there is evidence of trafficking in women and girls. It shall be the goal of the City to develop and fund projects to help prostitutes who have been subject to violence and to prevent such acts.

(4) The City shall ensure that all public works projects include measures, such as adequate lighting, to protect the safety of women and girls.

(5) It shall be the goal of the City to fund public information and education programs to change traditional attitudes concerning the roles and status of women and men.

(c) Health Care.

(1) It shall be the goal of the City to take all appropriate measures to eliminate discrimination against women and girls in the field of health care in order to ensure, on a basis of equity, information about and access to adequate health care facilities and services, according to the needs of all communities, regardless of race, ethnicity, culture, language, and sexual orientation, including information, counseling and services in family planning.

(2) It shall be the goal of the City to ensure that women and girls receive appropriate services in connection with prenatal care, delivery, and the post-natal period, granting free services where possible, as well as adequate nutrition during pregnancy and lactation.

(d) In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who

claims that such breach proximately caused injury. (Formerly Sec. 12K.2; added by Ord. 128-98, App. 4/13/98; renumbered and amended by Ord. 325-00, File No. 001920, App. 12/28/2000)

SEC. 12K.4. IMPLEMENTATION OF THE PRINCIPLES OF CEDAW IN SAN FRANCISCO.

(a) **Citywide integration of human rights principles.** The City shall work towards integrating gender equity and human rights principles into all of its operations, including policy, program and budgetary decision-making. The Commission shall train selected departments in human rights with a gender perspective.

(b) **Gender Analysis and Action Plan.** As a tool for determining whether the City is implementing the local principles of CEDAW and/or discriminating against women and girls, selected City departments, programs, policies, and private entities to the extent permitted by law, shall undergo a gender analysis and develop an Action Plan. The gender analysis shall be conducted according to guidelines developed by the CEDAW Task Force and Commission. The gender analysis shall include: (i) the collection of disaggregated data; (ii) an evaluation of gender equity in the entity's operations, including its budget allocations, delivery of direct and indirect services and employment practices and (iii) the entity's integration of human rights principles and the local principles of CEDAW as set forth in section 12K.3. Upon completion of the gender analysis, the entity shall develop an Action Plan that contains specific recommendations on how it will correct any identified deficiencies and integrate human rights principles and the local principles of CEDAW into its operations.

(1) The CEDAW Task Force shall identify the City departments, programs, policies, and entities, to undergo the gender analysis and shall develop timelines for completion of the analyses and Action Plans. In the absence of Task Force action, the Commission shall make the selections.

(2) The Commission shall train the selected department, entity, policy or program staff to conduct its gender analysis and shall provide technical assistance to the entity throughout the gender analysis process and development of the Action Plan.

(3) Each department or entity undergoing a gender analysis shall designate a management and/or executive level employee to serve as a liaison to the Commission and to coordinate the completion of the gender analysis.

(4) Each department or entity undergoing a gender analysis shall provide a report on its gender analysis and its Action Plan to the CEDAW Task Force and the Commission, which shall review, analyze and comment on the report and forward it to the Board of Supervisors and the Mayor.

(5) The Commission shall monitor the implementation of each department or entity's Action Plan.

(c) **Five-year Citywide Action Plan.** Provided sufficient funds are available, the Commission and the CEDAW Task Force shall jointly develop a five-year Citywide Action Plan. The Citywide Action Plan shall address how to integrate human rights principles into the City's operations, how to further implement the local principles of CEDAW as described in Section 12K.3, any and all deficiencies found in the gender analyses and the measures recommended to correct those deficiencies. The Commission and the CEDAW Task Force shall present the Action Plan to the Mayor and the Board of Supervisors on or before December 30, 2002. The Board of Supervisors Committee responsible for considering the City's budget shall hold a hearing to receive the Citywide Action Plan and public comment thereon. The Commission shall monitor the implementation of the Citywide Action Plan. (Formerly Sec. 12K.3; added by Ord. 128-98, App. 4/13/98; renumbered and amended by Ord. 325-00, File No. 001920, App. 12/28/2000)

SEC. 12K.5. CEDAW TASK FORCE.

(a) **Establishment.** A CEDAW Task Force is hereby established. The Task Force shall report to the Mayor, the Board of Supervisors and

the Commission. The Commission shall provide administrative support for the Task Force. The Task Force shall consist of 11 members.

(b) **Purpose.** The Task Force is established to advise the Mayor, the Board of Supervisors and the Commission about the local implementation of CEDAW.

(c) **Powers and Duties.** The Task Force shall have all powers and duties necessary to carry out the local implementation of CEDAW as described in Section 12K.4.

(d) Membership and Organization.

(1) The members of the Task Force shall be as follows:

(A) The President of the Human Rights Commission or her or his designee;

(B) A staff member from the Mayor's Office knowledgeable about the City's budget, to be designated by the Mayor;

(C) The head of the Department of Human Resources or her or his designee;

(D) The President of the Board of Supervisors or her or his designee;

(E) The President of the Commission or her or his designee;

(F) Six members from the community to be appointed by the Commission, as follows:

(i) Two representatives shall work in the field of international human rights and be knowledgeable about CEDAW,

(ii) One representative shall be knowledgeable about economic development, including employment issues,

(iii) One representative shall be knowledgeable about health care issues,

(iv) One representative shall be knowledgeable about violence against women, and

(v) One representative shall be knowledgeable about City unions and experienced in women's issues.

(2) The Task Force shall convene by June 1, 1998.

(3) The Task Force shall expire on June 30, 2003, unless its powers are renewed by the Board of Supervisors. When the Task Force ex-

pires, the Commission shall take on the leadership and responsibilities previously designated to the Task Force.

(4) All appointed members of Task Force shall serve at the pleasure of their appointing authorities. The term of each community member of the CEDAW Task Force shall be for two years; provided however, that the initial members shall, by lot, classify their terms so that three members shall serve a two-year term and two members shall serve a three-year term. Subject to the expiration of the Task Force, their successors shall be appointed for a two-year term; provided, however, that any member may be reappointed for consecutive terms.

(e) **Alternate members.** An alternate may be designated for each member. Ex officio members enumerated in Subsection (d)1(A)—(E) may designate a person to serve as her or his alternate. The Commission may appoint alternate members for those community members enumerated in Subsection (d)(1)(F). The term of office of the alternate shall be the same as that of the regular member. When the regular member is not present at the meeting of the Task Force, the alternate may act as the regular member and shall have all the rights, privileges, and responsibilities of the regular member.

(f) **Attendance requirement.** The President of the Commission, or her or his designee, shall monitor the attendance of the Task Force. In the event that any community member, enumerated in Subsection (d)(1)(F), and her or his alternate miss three regularly scheduled meetings of the Task Force without the prior notice to the Task Force, the President or her or his designee shall certify in writing to the Commission that the member and alternate have missed three meetings. On the date of such certification, the member and alternate shall be deemed to have resigned from the Task Force. The President or her or his designee shall notify the Commission of the resignation and request the appointment of a new member and alternate. (Formerly Sec. 12K.4; added by Ord. 128-98, App. 4/13/98; renumbered and amended by Ord. 325-00, File No. 001920, App. 12/28/2000; Ord. 16-03, File No. 021853, App 2/7/2003)

SEC. 12K.6. SUMMARY OF CEDAW.

Article 1: Defines discrimination against women as any "distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of marital status, on the basis of equality between men and women, of human rights or fundamental freedom in the political, economic, social, cultural, civil, or any other field."

Article 2. Mandates concrete steps, implementing laws, policies and practices to eliminate discrimination against women and embody the principle of equality.

Article 3. Requires action in all fields—civil, political, economic, social, and cultural—to advance the human rights of women.

Article 4. Permits affirmative action measures to accelerate equality and eliminate discrimination.

Article 5. Recognizes the role of culture and tradition, and calls for the elimination of sex role stereotyping.

Article 6. Requires suppression of traffic in women and exploitation of prostitutes.

Article 7. Mandates ending discrimination against women in political and public life.

Article 8. Requires action to allow women to represent their governments internationally on an equal basis with men.

Article 9. Mandates that women will have equal rights with men to acquire, change or retain their nationality and that of their children.

Article 10. Obligates equal access to all fields of education and the elimination of stereotyped concepts of the roles of men and women.

Article 11. Mandates the end of discrimination in the field of employment and recognizes the right to work as a human right.

Article 12. Requires steps to eliminate discrimination from the field of health care, including access to family planning. If necessary, these services must be free of charge.

Article 13. Requires that women be ensured equal access to family benefits, bank loans, credit, sports and cultural life.

Article 14. Focuses on the particular problems faced by rural women.

Article 15. Guarantees equality before the law and equal access to administer property.

Article 16. Requires steps to ensure equality in marriage and family relations.

Article 17. Calls for the establishment of a committee to evaluate the progress of the implementation of CEDAW.

Articles 18—30. Set forth elements of the operation of the treaty. (Formerly Sec. 12K.5; added by Ord. 128-98, App. 4/13/98; renumbered by Ord. 325-00, File No. 001920, App. 12/28/2000)

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CHAPTER 12L: PUBLIC ACCESS TO RECORDS AND MEETINGS OF NONPROFIT ORGANIZATIONS

- Sec. 12L.1. Intent and Interpretation; Costs of Compliance.
- Sec. 12L.2. Contract Language Establishing Public Access to Nonprofit Organizations.
- Sec. 12L.3. Definitions.
- Sec. 12L.4. Public Access to Meetings.
- Sec. 12L.5. Public Access to Records.
- Sec. 12L.6. Community Representation.
- Sec. 12L.7. Compliance.
- Sec. 12L.8. Severability.
- Sec. 12L.9. City Undertaking Limited to Promotion of General Welfare.
- Sec. 12L.10. Effective Date.

SEC. 12L.1. INTENT AND INTERPRETATION; COSTS OF COMPLIANCE.

(a) The intent of this Chapter is to establish a policy wherein the City ensures that nonprofit organizations with which the City chooses to do business operate with the greatest possible openness and maintain the closest possible ties to communities they intend to serve. Nothing in this Chapter shall be construed to limit the level of openness and democracy in nonprofit organizations and any contracting nonprofit organization may establish policies that guarantee additional openness to stakeholders.

(b) This Chapter is intended to be cost-neutral in its effects upon nonprofit organizations, and the requirements imposed by this Chapter shall be subject to that intent. This Chapter is not intended to impose obligations equal to those of governmental agencies upon nonprofit organizations doing business with the City. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.2. CONTRACT LANGUAGE ESTABLISHING PUBLIC ACCESS TO NONPROFIT ORGANIZATIONS.

(a) Each contracting agency of the City or any department thereof, acting for or on behalf of the City, shall include in all contracts between it and any nonprofit organization which are subject to this Chapter, provisions imposing the requirements set forth in Sections 12L.4 through 12L.7, inclusive.

(b) Each contracting agency of the City or any department thereof shall include in every invitation to submit proposals or requests for City-administered funding provisions requiring that any nonprofit organization submitting such a proposal or request provide information regarding its efforts to comply with this Chapter, and further include a summary stating, to the best of the nonprofit organization's knowledge, all complaints concerning the nonprofit organization filed with any contracting agency of the City or any department thereof under this Chapter in the preceding two years which that City agency or department has deemed to be substantiated and the disposition of each such complaint, or a statement that no such complaints have been filed in the preceding two years.

(c) In furtherance of the purposes of this Chapter, the Controller, in consultation with the City Attorney, shall create the provisions described in Subsections (a) and (b), above, consistent with the provisions of this Chapter. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.3. DEFINITIONS.

As used in this Chapter the following words and phrases shall have the meanings indicated herein:

(a) "Board of Directors" shall mean the Board of Directors, the Board of Trustees, or other principal decision making body of any nonprofit organization.

(b) "City" shall mean the City and County of San Francisco.

(c) "Contract" shall mean an agreement (however titled, including without limitation a memorandum of understanding) to grant or otherwise provide funds to a nonprofit organization including funds from another governmental entity administered through the City or any City commission, City board, City agency or City department, for such organization's operation, new or existing programs, events, performances, capital improvements, or for goods or services provided by or through such organization, to all or any portion of the public. "Contract" shall not include (1) an agreement to provide goods to the City pursuant to bids or requests for proposals, where the City is the end user of the goods, or (2) an agreement to provide services or benefits to City employees and/or to their family members, dependents, or their other designated beneficiaries.

(d) "Cost-neutral" shall mean that a nonprofit organization's reasonable costs of complying with this Chapter (not including direct costs of duplication, or mailing costs, of financial documents which are paid by a member of the public pursuant to Section 12L.5(a) herein) shall not exceed five hundred dollars per year.

(e) "Nonprofit organization" shall mean any corporation formed pursuant to California Corporations Code Sections 5000 et seq. for any public or charitable purpose, and/or any organization described within 26 USC Section 501(c), which receives a cumulative total per year of at least \$250,000 in City-provided or City-administered funds.

(f) "Designated public meeting" shall mean any regular or special meeting of the Board of Directors of a nonprofit organization which the Board of Directors designates as open to all members of the public pursuant to Section 12L.4(a)(1) of this Chapter. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.4. PUBLIC ACCESS TO MEETINGS.

(a) **Meetings Open to the Public.** Except as provided in Subsections (a)(2) or (a)(3), the following requirements shall be included in all City contracts with nonprofit organizations:

(1) Each nonprofit organization shall designate and hold at least two designated public meetings per year. Issues addressed by the Board of Directors at designated public meetings shall be of approximately the same general nature and significance to the nonprofit organization as issues typically addressed by the Board of Directors at its other regular or special meetings. These issues may include adoption of the nonprofit organization's budget, nomination of members of the organization's Board of Directors, and evaluation of the organization's contract(s) with the City. At least one designated public meeting the public shall have an opportunity to address the Board of Directors on membership on the Board of Directors and to propose candidates for membership on the Board of Directors as provided in Section 12L.6(b).

(2) Section 12L.4(a)(1) shall apply to the full extent allowed by State and federal law.

(3) Section 12L.4(a)(1) shall not apply to nonprofit organizations engaged primarily in the provision of abortion counseling or services, domestic violence sheltering services, or suicide prevention counseling services.

(b) **Closed Meetings.** The Board of Directors may choose to close a portion of a designated public meeting:

(1) When discussing any matters pertaining to the particular recipients of the nonprofit organization's goods or services or donors of in-kind or monetary contributions to the nonprofit organization where the discussion would necessarily reveal the identity of clients or donors;

(2) When discussing any matters pertaining to litigation; real estate negotiations; the appointment, employment, evaluation of performance, or dismissal of an employee of the nonprofit organization; or labor negotiations in which the nonprofit organization is involved; when hear-

ing complaints or charges against an employee of the nonprofit organization; or when discussing attorney-client privileged information, or information which constitutes a trade secret;

(3) Under any circumstances where admitting members of the public is prohibited by State or federal law;

(4) Under any other circumstances where the Board of Supervisors has approved the closing of a portion of a designated public meeting by the nonprofit organization.

(c) Public Comment.

(1) At every designated public meeting the public shall have an opportunity to directly address the Board of Directors on any item of interest to the public relating to the operations of or services provided by the nonprofit organization.

(2) At any designated public meeting, the Board of Directors may adopt reasonable regulations to insure that the intent of this Section is carried out, provided that the Board of Directors allows for at least 30 minutes of public comment at each designated public meeting.

(d) Notice.

(1) Each nonprofit organization shall provide the public with notice of each designated public meeting at least 30 days in advance of the meeting.

(2) The Board of Directors shall cause a written notice of the date, time and location of each designated public meeting to be submitted to the Clerk of the Board of Supervisors who shall post the written notice where notices of meetings of the Board of Supervisors are posted, and to the San Francisco Main Library Government Information Center which shall post the written notice where notices of meetings of City boards and commissions are posted. In addition, upon inquiry by a member of the public, the nonprofit organization shall disclose the date, time and location of the designated public meeting. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.5. PUBLIC ACCESS TO RECORDS.

(a) **Disclosure of Financial Information.** Subject to Section 12L.5.(c), each nonprofit organization shall maintain and make available for public inspection and copying a packet of financial information concerning the nonprofit organization. The packet shall include, at a minimum, (1) the nonprofit organization's most recent budget as already provided to the City in connection with the nonprofit organization's application for, or in connection with the review and/or renewal of, the nonprofit organization's contract, (2) its most recently filed State and federal tax returns except to the extent those returns are privileged, and (3) any financial audits of such organization performed by or for the City and any performance evaluations of such organization performed by or for the City pursuant to a contract between the City and the nonprofit organization, to the extent that such financial audits and performance evaluations (i) are in the nonprofit organization's possession, (ii) may be publicly disclosed under the terms of the contract between the City and the nonprofit organization, and (iii) relate to the nonprofit corporation's performance under its contract with the City within the last two years. A member of the public may request additional financial information other than that described above, pursuant to Section 12L.5(b) herein; however, the provision of such additional financial information by a nonprofit organization shall be voluntary, not compulsory. Members of the public, upon giving ten days' notice to the nonprofit organization, shall be entitled to inspect the packet of financial information during the nonprofit organization's regular business hours or to receive a copy of the packet of information for which the nonprofit organization may recover from the member of the public the organization's direct costs of duplication. Notwithstanding the foregoing, a nonprofit organization described within Sections 12L.4(a)(3) herein may comply with Section 12L.5(a) herein by sending a copy of its financial information packet, by first class mail, with the costs of such mailing prepaid by the member of the public, to a member of the public who has requested such information.

(b) **Dispute Resolution.** A member of the public who requests additional financial information other than that described in Section 12L.5(a), above, or who has a complaint concerning a nonprofit organization's compliance or noncompliance with this Chapter, may submit that request or complaint to the City agency or department which is a party to and/or which administers the nonprofit organization's contract. That City agency or department shall consider the request or complaint and shall recommend a resolution thereof in accordance with procedures established by that City agency or department. Following such consideration and recommendation, the member of the public or the nonprofit organization may seek an advisory opinion concerning the request or complaint from the Sunshine Ordinance Task Force, which that Task Force shall be authorized to provide; provided, however, that failure to seek such an advisory opinion from the Sunshine Ordinance Task Force shall not prejudice the right of the member of the public and/or the nonprofit organization to obtain a review of the City agency or department's recommendation by the Board of Supervisors as provided herein. The member of the public or the nonprofit organization may request that the Board of Supervisors review the recommendation of the City agency or department, which review shall be conducted in accordance with procedures established by the Board of Supervisors, provided that such request is made in writing to the Clerk of the Board of Supervisors within ten days of the issuance of the City agency or department's recommendation or the Sunshine Ordinance Task Force's advisory opinion, whichever is later. Subject to Section 12L.7. herein, the recommendation of the City agency or department, or the determination of the Board of Supervisors, with respect to any request or complaint by a member of the public shall be nonbinding upon the nonprofit organization.

(c) **Donor Confidentiality.** No nonprofit organization shall be required to make available to the public any document which would reveal the identity of any of that nonprofit organization's donors or the amount or nature of any individual donations to that nonprofit organization. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.6. COMMUNITY REPRESENTATION.

(a) It shall be the policy of the City that each nonprofit organization shall make good-faith efforts designed to promote the membership, on its Board of Directors, of at least one person who is a recipient of the goods or services of that nonprofit organization or of like goods or services provided by another nonprofit organization.

(b) Each nonprofit organization shall seek candidates for appointment to its Board of Directors who consume or receive its goods or services, or like goods or services provided by another nonprofit organization, and who are members of the class of persons intended to be benefited by the organization's activities or services. The nonprofit organization shall seek these candidates by:

(1) Giving notice of vacancies on its Board of Directors by means reasonably calculated to come to the attention of the recipients of the goods or services or type of goods or services provided by the nonprofit organization, which may include, but shall not be limited to, posting written notice of such vacancies in a location accessible to recipients of such goods or services.

(2) Providing each member of the public the opportunity to propose him or herself or other member of the public for nomination for appointment to the Board of Directors at least one of the designated public meeting per year or in writing; and

(3) Providing members of the public the opportunity to comment on Board of Directors membership at least one of the designated public meetings per year. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.7. COMPLIANCE.

In the event that a nonprofit organization materially fails to comply with any contract provision required by this Chapter, the City agency or department which is a party to such contract shall consider such failure a material breach of the contract. The City agency or department may, but is not required to, further

consider such material breach as grounds for terminating the contract or not renewing the contract, partially or in its entirety. (Added by Ord. 198-98, App. 6/19/98)

90 or more days following the effective date of this Chapter. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.8. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency or department to impose any duties or obligations in conflict with limitations on municipal authority established by State or federal law at the time such agency or department action is taken.

In the event that a court or agency of competent jurisdiction holds that State or federal law invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person, or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.9. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City and County is undertaking only to promote the general welfare. The City and County is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

This Chapter does not create a legally enforceable right by any member of the public against the City or a nonprofit organization. (Added by Ord. 198-98, App. 6/19/98)

SEC. 12L.10. EFFECTIVE DATE.

This Chapter shall not apply to any contract executed or amended before 90 days following the effective date of this Chapter. This Chapter shall apply to all contracts executed or amended

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CHAPTER 12M: PROTECTION OF PRIVATE INFORMATION*

- Sec. 12M.1. Definitions.
- Sec. 12M.2. Nondisclosure of Private Information.
- Sec. 12M.3. Enforcement.
- Sec. 12M.4. Contract Requirements.
- Sec. 12M.5. Exceptions.
- Sec. 12M.6. Preemption.
- Sec. 12M.7. Severability
- Sec. 12M.8. Amendment by the Board of Supervisors.

SEC. 12M.1 DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply to the terms use herein.

(a) "City" shall mean the City and County of San Francisco.

(b) "Contract" shall mean an agreement for goods or services, including without limitation agreements for public works or improvements, or grant agreements (1) to be purchased or provided, at the expense of the City and County or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the City and County or (2) which grants the Contractor the right to receive revenues from sources other than the City based on its services under the agreement.

(c) "Contractor" shall mean any person or persons, associations, cooperatives, firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof, who submits a Bid or Proposal or enters into a Contract with the City and County.

(d) "Contracting Department" shall mean the department that recommends or requests that a Contract be executed by the Office of

Contract Administration, the Department of Public Works, or other department or public official authorized to execute the contract on the department's behalf.

(e) "Private Information" shall mean any information that (1) could be used to identify an individual, including without limitation name, address, social security number, medical information, financial information, date and location of birth, and names of relative; or (2) the law forbids any person from disclosing.

(f) "Subcontractor" shall mean any person or persons, association, cooperative, firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof, including without limitation any subcontractor, subconsultant or supplier at any tier, that has an arrangement or agreement, directly or indirectly, with a Contractor to perform any of Contractor's obligations under the Contract. (Added by Proposition D, 11/7/2006)

SEC. 12M.2. NONDISCLOSURE OF PRIVATE INFORMATION.

(a) The City shall not disclose Private Information to any person or entity unless specifically authorized to do so by the subject individual or by Contract or where required by Federal or State law or judicial order. The City shall not enter into any Contract for the primary purpose of disclosing Private Information and shall not receive any compensation for the disclosure of Private Information.

(b) No Contractor or Subcontractor who receives Private Information from the City in the performance of a Contract may disclose that information to a Subcontractor or any other person or entity, unless the Contract authorizes

***Editor's Note:**

Proposition D, approved November 7, 2006, repealed former Ch. 12M, in its entirety, and enacted provisions designated as a new Ch. 12M to read as herein set out. Former Ch. 12M was entitled, "Nondisclosure of Private Information."

the disclosure, the Contractor has first received written approval from the Contracting Department to disclose the information, or the disclosure is expressly required by judicial order. The disclosure and the use of the information shall be in accordance with any conditions or restrictions stated in the Contract or the Contracting Department's approval and shall not be used except as necessary in the performance of the obligations under the Contract. The department head or the department head's designee shall sign any approvals of the Contracting Department. (Added by Proposition D, 11/7/2006)

SEC. 12M.3. ENFORCEMENT.

Any failure of a Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor. (Added by Proposition D, 11/7/2006)

SEC. 12M.4. CONTRACT REQUIREMENTS.

All Contracts and amendments to Contracts entered into after ninety days after the effective date of this Chapter shall incorporate by reference the provisions of Sections 12M.2 and 12M.3 of this Chapter. (Added by Proposition D, 11/7/2006)

SEC. 12M.5. EXCEPTIONS.

This Chapter shall not apply in the following circumstances:

(a) When a Contract involves the expenditure of funds received by the City and County to the extent the application of the Chapter would violate or be inconsistent with the terms or conditions of the applicable grant agreement, subvention or agreement or the instructions of an authorized representative of any such agency with respect to any such grant agreement, subvention or agreement.

(b) When a Contract is for the purchase, sale, transfer or lease of any interest in real property or a license or permit for the use of real property. (Added by Proposition D, 11/7/2006)

SEC. 12M.6. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any Federal or State law. (Added by Proposition D, 11/7/2006)

SEC. 12M.7. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Proposition D, 11/7/2006)

SEC. 12M.8. AMENDMENT BY THE BOARD OF SUPERVISORS.

The Board of Supervisors may amend this Chapter to ensure the protection of Private Information with a two-thirds vote. (Added by Proposition D, 11/7/2006)

**CHAPTER 12N: LESBIAN, GAY, BISEXUAL,
TRANSGENDER, QUEER, AND QUESTIONING YOUTH:
YOUTH SERVICES SENSITIVITY TRAINING**

- Sec. 12N.1. Definitions.
- Sec. 12N.2. Contract Language Requiring Youth Service Providers to Provide Lesbian, Gay, Bisexual, and Transgender Sensitivity Training for Any Employee or Volunteer Who Has Direct Contact With Youth or Whose Work Directly Affects Youth.
- Sec. 12N.3. Requirement That City Departments Provide Lesbian, Gay, Bisexual, and Transgender Sensitivity Training for Any City Employee Who Has Direct Contact with Youth or Whose Work Directly Affects Youth.
- Sec. 12N.4. Effective Date.

SEC. 12N.1. DEFINITIONS.

As used in this Chapter the following words and phrases shall have the meanings indicated herein:

(a) "City" shall mean the City and County of San Francisco.

(b) "Contract" shall mean an agreement (however titled, including, without limitation, a memorandum of understanding) to grant or otherwise provide funds to an organization for youth services, including funds from another governmental entity administered through the City or any City commission, board, agency or department. "Contract" shall not include (1) an agreement to provide goods to the City pursuant to bids or requests for proposals, where the City is the end user of the goods or (2) an agreement to provide services or benefits to City employees and/or to their family members, dependents, or their other designated beneficiaries.

(c) "Organization" shall mean any corporation formed under California law for any private, public or charitable purpose, or any collabora-

tive, which receives a cumulative total per year of at least \$50,000 in City-provided or City-administered funds.

(d) "Sensitivity training" shall mean any program provided from a list of providers whose programs have been reviewed and approved by a joint Human Rights Commission and Youth Commission committee and shall include, but is not limited to, training regarding issues faced by disabled, HIV positive, immigrant, persons of color, sexually abused, runaways from non-accepting households, and homeless lesbian, gay, bisexual, transgender, queer, and questioning youth.

(e) "Youth Services" shall mean child care, including after school care; job readiness, training, and placement; health, including mental health and substance abuse; social services; homeless prevention, housing or shelter programs or services; education; recreation; delinquency prevention; and library services programs directed at or designed to serve children or youth between the ages of ten and eighteen years old, or older as defined by the organization. (Added by Ord. 177-99, File No. 990546, App. 6/25/99)

**SEC. 12N.2. CONTRACT LANGUAGE
REQUIRING YOUTH SERVICE
PROVIDERS TO PROVIDE LESBIAN,
GAY, BISEXUAL, AND TRANSGENDER
SENSITIVITY TRAINING FOR ANY
EMPLOYEE OR VOLUNTEER WHO HAS
DIRECT CONTACT WITH YOUTH OR
WHOSE WORK DIRECTLY AFFECTS
YOUTH.**

(a) Each contracting agency of the City or any department thereof, acting for or on behalf of the City, shall include in every solicitation for youth services under the competitive contractor selection process, provisions requiring any organization submitting such a proposal or request to

provide lesbian, gay, bisexual, and transgender sensitivity training for any employee or volunteer who has direct contact with youth, or whose work directly affects youth as part of its proposal or request.

(b) Each contracting agency of the City or any department thereof, acting for or on behalf of the City, shall include in all contracts between it and any organization that is subject to this Chapter a provision requiring lesbian, gay, bisexual, and transgender sensitivity training for any employee or volunteer who has direct contact with youth or whose work directly affects youth. The contract shall require the organization to conduct such a training on an annual basis, unless the contracting agency of the City or any department thereof requires more frequent trainings. The contract shall require the organization to provide documentation certifying to its Board of Directors and the City agency or department administering the contract that such a training was conducted and the requirements of the training were fulfilled on an annual basis.

(c) In furtherance of the purposes of this Chapter, the Controller, in consultation with the City Attorney, shall create the provisions described in subsections (a) and (b) above, consistent with the provisions of this Chapter.

(d) Each City department or agency administering contracts with organizations providing youth services shall provide copies of the documentation certifying that such trainings were conducted, as required in Chapter 12N of the San Francisco Administrative Code, to the Commission, if any, that oversees the sponsoring department or agency and the San Francisco Youth Commission.

(e) Failure to comply with any provision required by this Chapter shall constitute a material breach of the contract and may be grounds for termination of the contract. Every City agency or department must report all contract breaches to the Human Rights Commission at their next regularly scheduled meeting. (Added by Ord. 177-99, File No. 990546, App. 6/25/99)

SEC. 12N.3. REQUIREMENT THAT CITY DEPARTMENTS PROVIDE LESBIAN, GAY, BISEXUAL, AND TRANSGENDER SENSITIVITY TRAINING FOR ANY CITY EMPLOYEE WHO HAS DIRECT CONTACT WITH YOUTH OR WHOSE WORK DIRECTLY AFFECTS YOUTH.

Each City department shall provide lesbian, gay, bisexual, and transgender sensitivity training for any employee who has direct contact with youth or whose work directly affects youth. (Added by Ord. 177-99, File No. 990546, App. 6/25/99)

SEC. 12N.4. EFFECTIVE DATE.

This Chapter shall not apply to any contract for which a solicitation was issued 90 days following the effective date of this Chapter. This Chapter shall apply to all contracts for which a solicitation was issued more than 90 days following the effective date of this Chapter. (Added by Ord. 177-99, File No. 990546, App. 6/25/99)

CHAPTER 12O: EARNED INCOME CREDIT INFORMATION

- Sec. 12O.1. Definitions.
- Sec. 12O.2. Required Contract Provisions.
- Sec. 12O.3. Preemption.
- Sec. 12O.4. Severability.

SEC. 12O.1. DEFINITIONS.

As used in this Chapter the following capitalized words and phrases shall have the following meanings:

"City" shall mean the City and County of San Francisco.

"Contract" shall mean a Prime Contract or a Subcontract.

"Contract Amendment" shall mean an agreement pursuant to which a Contract entered into prior to the Effective Date is modified or supplemented in order to: (i) extend the term; (ii) increase the total amount of payments due to a Contractor; or (iii) increase the scope of work or services to be performed by a Contractor.

"Contractor" shall mean either (i) a Prime Contractor; or (ii) the person or entity that enters into a Subcontract with a Prime Contractor.

"Contracting Department" shall mean the department, office, commission or other City entity that enters into the applicable Contract on behalf of the City.

"Effective Date" shall mean January 1, 2000.

"EIC Forms" shall mean, at the time in question, any forms published by the Federal Internal Revenue Service for use in claiming all or any portion of the federal Earned Income Credit. For example, as of the Effective Date, such forms consist of IRS Form W-5 and IRS Schedule EIC.

"EIC Limit" shall mean, at the time in question, the highest income limit under which a person (assuming the highest number of qualifying children) could be eligible for the federal Earned Income Credit under federal laws, rules

and regulations. For example, as of the Effective Date, such highest income limit is \$30,580 per year.

"Eligible Employee" shall mean any employee of Contractor who is paid at a rate that, on an annualized basis, is not greater than the EIC Limit.

"Prime Contract" shall mean (a) either an agreement pursuant to which the City obtains public works or improvements or goods or services, at the City's expense or from trust funds under the control of the City; or (b) an agreement pursuant to which the City grants funds to a third party, at the City's expense or from trust funds under the control of the City. Notwithstanding the foregoing, the term "Prime Contract" shall exclude (i) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into); (ii) agreements entered into after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, which bid packages or requests for proposals were not amended on or after the Effective Date; and (iii) agreements with a Contractor that is a public entity.

"Prime Contractor" shall mean the person or entity that enters into a Prime Contract with the City.

"Subcontract" shall mean an agreement pursuant to which a Prime Contractor obtains from a third party goods, services or labor to be used in the fulfillment of the Prime Contractor's duties under the applicable Prime Contract. (Added by Ord. 245-99, File No. 991107, App. 9/30/99)

SEC. 12O.2. REQUIRED CONTRACT PROVISIONS.

Every Contract or Contract Amendment entered into on or after the Effective Date shall provide as follows:

(a) Contractor shall provide the EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the

date on which the applicable Contract or Contract Amendment becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in question); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of the Contract.

(b) Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract.

(c) If within thirty (30) days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under the terms of the Contract or under applicable law. (Added by Ord. 245-99, File No. 991107, App. 9/30/99)

SEC. 120.3. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law. (Added by Ord. 245-99, File No. 991107, App. 9/30/99)

SEC. 120.4. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Ord. 245-99, File No. 991107, App. 9/30/99)

CHAPTER 12P: MINIMUM COMPENSATION

- Sec. 12P.1. Title.
- Sec. 12P.2. Definitions.
- Sec. 12P.3. Minimum Compensation Components.
- Sec. 12P.4. San Francisco International Airport.
- Sec. 12P.5. Contract Requirements.
- Sec. 12P.5.1. Additional Contract Requirements.
- Sec. 12P.6. Administration and Enforcement.
- Sec. 12P.7. Waivers by the Agency.
- Sec. 12P.8. Additional Waivers by the Agency—Nonprofit Corporations.
- Sec. 12P.9. Special Waiver by the Public Utilities Commission.
- Sec. 12P.10. Waiver Through Collective Bargaining.
- Sec. 12P.11. City Departments to Cooperate with Agency.
- Sec. 12P.12. Relationship to Other Requirements.
- Sec. 12P.13. Report by Airport Director.
- Sec. 12P.14. Preemption.
- Sec. 12P.15. Effective Date.
- Sec. 12P.16. Severability.

SEC. 12P.1. TITLE.

This Chapter shall be known as the "Minimum Compensation Ordinance." (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.2. DEFINITIONS.

As used in this Chapter the following capitalized terms shall have the following meanings:

(a) "Agency" shall mean the Office of Labor Standards Enforcement.

(b) "City" shall mean the City and County of San Francisco.

(c) "Consumer Price Index" or "CPI" shall mean the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose metropolitan statistical area.

(d) "Contract" shall mean an agreement or portion of an agreement that provides for services to be purchased at the expense of the City or out of trust funds established by Charter, ordinance or Memorandum of Understanding ("MOU"). The term "Contract" shall include, without limitation, Included Subcontracts and agreements such as grant agreements, pursuant to which agreements the City grants funds to a Contractor for services (including, without limitation, cultural activities, performances or exhibitions) to be rendered to all or any portion of the public rather than to City government.

(e) Notwithstanding the foregoing, the term "Contract" shall exclude:

(1) Excluded Subcontracts;

(2)(A) Any agreement with a Contractor that, together with the Employees of any Included Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or controls the Contractor, would have twenty (20) or fewer Employees;

(B) Notwithstanding subsection (e)(2)(A), for every Contract and Contract Amendment entered into on or after the Effective Date of the Amendment, the term "Contract" shall exclude any agreement with a Contractor that, together with the Employees of any Included Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or controls the Contractor, would have five (5) or fewer Employees;

(3) Agreements for the purchase or lease of goods or for guarantees, warranties, shipping, delivery or initial installation of such goods;

(4) Agreements entered into pursuant to settlement of legal proceedings;

(5) Agreements for urgent or specialized litigation requirements where the City Attorney's Office finds that it would be in the best interests of the City not to include the requirements of this Chapter;

(6)(A) Agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with a Contracting Department is less than twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations, in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with a Contracting Department to exceed twenty-five thousand dollars (\$25,000), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations;

(B) Notwithstanding the provisions of subsection (e)(6)(A) for every Contract and Contract Amendment entered into on or after the Effective Date of the Amendment, the term "Contract" shall exclude Agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with a Contracting Department is less than twenty-five thousand dollars (\$25,000) in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with a Contracting Department to exceed twenty-five thousand dollars (\$25,000);

(7) Agreements for the investment, management or use of trust assets where compliance with this Chapter would violate the fiduciary duties of the trustee;

(8) Agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into);

(9) Agreements entered into after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior

to the Effective Date, which bid packages or requests for proposals were not amended on or after the Effective Date;

(10) Agreements involving the expenditure by the City of grant or special funds (A) to the extent the application of this Chapter would violate or be inconsistent with the terms or conditions of the applicable grant agreement, or with the rules, regulations or instructions of the public agency administering such grant agreement, which terms or conditions or rules, regulations or instructions provide for compensation lower than the Minimum Compensation, provided, however, that this subsection (A) shall not apply to terms or conditions of a grant agreement from the State of California that violates or is inconsistent with California Labor Code Section 1205(c), and/or (B) to the extent that application of this Chapter would require the City to use General Fund monies to supplement the grants, special funds or other non-General Fund revenues to maintain the current level of services;

(11) Agreements with a Contractor that is a public entity whose jurisdictional boundaries are not coterminous with those of the City;

(12) Agreements for employee benefits to be provided to City employees, where the Director of Human Resources finds that no entity is willing to comply with this Chapter and is capable of providing the required employee benefits;

(13) Agreements that require the Contractor to pay no less than the "prevailing rate of wage" in accordance with Section A7.204 of Appendix A to the City's Charter or any provision of the San Francisco Administrative Code, but only to the extent (A) each Covered Employee is covered by such requirement, and (B) such prevailing rate of wage is not less than the gross hourly compensation required under Section 12P.3(a)(i) of this Chapter;

(14) Agreements for the investment of City monies where the Treasurer finds that requiring compliance with this Chapter will violate the Treasurer's fiduciary duties and for the investment of retirement, health or other funds held in

trust pursuant to Charter, statute, ordinance or MOU where the official or officials responsible for investing or managing such funds finds that requiring compliance with this Chapter will violate their fiduciary duties;

(15) Agreements made in connection with loans or grants under which the City, as creditor or grantor, is providing funds to be used by the debtor or grantee to:

(A) Acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed;

(B) Construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate-income households; or

(C) Rehabilitate improvements owned or leased by the debtor or grantee; and

(16) Agreements (including, without limitation, any lease, concession, franchise or easement agreement) for the exclusive use of real property owned by the City or of which the City has exclusive use, other than agreements for the use of airport property as set forth in Section 12P.4.

(f) "Contract Amendment" shall mean the modification of a Contract in order to: (1) extend the term; (2) modify the total amount of payments due from the City under a Contract; (3) modify the scope of services to be performed by a Contractor; or (4) expand or relocate the premises covered under an airport property contract. The term does not include construction change orders.

(g) "Contracting Department" shall mean the City department, office, commission or other City entity which enters into the applicable Contract on behalf of the City.

(h) "Contractor" shall mean either:

(1) The person or entity that enters into a Services Contract with the City; or

(2) In the case of an Included Subcontract, the subcontractor who enters into the included Subcontract with the Contractor.

(i) "Covered Employee" shall mean:

(1) An Employee of a Contractor who, during the applicable Pay Period, performs at least four (4) hours per week during the Pay Period of work funded (in whole or in part) under the applicable Contract or on the project funded under the applicable Contract:

(A) Within the geographic boundaries of the City;

(B) On real property owned or controlled by the City, but outside the geographic boundaries of the City; or

(C) Elsewhere in the United States, but only if such related work performed elsewhere within the United States consists of at least ten (10) hours per each work week during the Pay Period in question.

(2) Notwithstanding the provisions of subsection (i)(1), for every Contract and Contract Amendment entered into on or after the Effective Date of the Amendment the term "Covered Employee" shall include an Employee of a Contractor who works elsewhere in the United States and who, during the applicable Pay Period, performs at least four (4) hours per week of work funded (in whole or in part) under the applicable Contract or to on the project funded under the applicable Contractor.

(3) Employees of the In-Home Supportive Services Public Authority shall be covered employees as designated in Section 70.11 of this Code.

(4) Notwithstanding the foregoing, the term "Covered Employee" shall exclude the following Employees of a Contractor that is a Nonprofit Corporation:

(A) Any Employee who is under the age of eighteen (18) and is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer Employee; or employed as a trainee in a bona fide training program consistent with Federal law, which training program enables the Employee to advance into a permanent position; provided, however, these exemptions only apply when the Employee

does not replace, displace or lower the wage or benefits of any existing position or Employee; and,

(B) Any disabled Employee of a Contractor, which disabled Employee: is covered by a current sub-minimum wage certificate issued to the Contractor by the U.S. Department of Labor; or would be covered by such a certificate but for the fact that the Contractor is paying a wage equal to or higher than the minimum wage.

(5) For every Contract and Contract Amendment entered into on or after the Effective Date of the Amendment, the term "Covered Employee" shall include an Employee of a Contractor who also participates in the CalWorks Program, or any similar successor program, who during the applicable Pay Period performs any welfare-to-work activities considered "employment" under the Fair Labor Standards Act (29 U.S.C. §§ 201 et. seq.) and any applicable United States Department of Labor regulations or guideline, funded (in whole or in part) under the applicable Contract or on the project funded under the applicable Contract; provided, however, that the hourly rate of payment for these Covered Employees shall be set by the Executive Director of the Department of Human Services at the maximum rate that is in conformance with CalWorks eligibility criteria so that these Covered Employees maintain CalWorks eligibility. Prior to June 1 of each year, the Executive Director shall provide such rate to the Office of Labor Standards Enforcement for publication. This amount shall be adjusted yearly, as necessary, to reflect any changes in federal or state law governing CalWorks eligibility.

(j) "Effective Date" shall mean the applicable effective date specified in Section 12P.15 of this Chapter.

(k) "Effective Date of the Amendment" shall mean the date thirty (30) days after adoption of the amendment to this Ordinance introduced on June 19, 2007.

(l) "Employee" shall mean any person who is employed by a Contractor, including part-time and temporary employees.

(m) "Excluded Subcontract" shall mean any agreement or portion of an agreement between a Contractor and a person or entity who is not an Employee of such Contractor, which agreement or portion of an agreement relates to a Contract but is not an Included Subcontract. The term "Excluded Contract" shall include, without limitation, an agreement pursuant to which a Contractor obtains from such a person or entity goods to be used in the fulfillment of the Contractor's duties under the applicable Contract. The term shall also include agreements (including, without limitation, any lease, concession, franchise or easement agreement) for the exclusive use of real property owned by the City or of which the City has exclusive use, other than agreements for the use of airport property as set forth in Section 12P.4.

(n) "Included Subcontract" shall mean an agreement or portion of an agreement between a Contractor and a person or entity who is not an Employee of such Contractor, pursuant to which such person or entity: (1) agrees to assist a Contractor in performing a Contract; or (2) agrees to assist a Contractor with a project funded by grant monies conveyed to the Contractor under the applicable Contract. An agreement to assist a Contractor shall mean an agreement to perform all or a portion of a component of the services covered by the Contract with the City.

(o) "Minimum Compensation" shall mean each of the components required under Section 12P.3. of this Chapter.

(p) "Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

(q) "Pay Period" shall mean the applicable Contractor's regular pay period.

(r) "Projected shortfall" shall mean that the Joint Report prepared by the Mayor, the Board's Budget Analyst, and the Controller pursuant to Section 3.6 of this Code has projected a shortfall for the upcoming fiscal year of 1% or more of total General fund uses. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.3. MINIMUM COMPENSATION COMPONENTS.

(a) Minimum Compensation shall consist of each of the following:

(1)

(A)(i) Hourly gross compensation in the amount of nine dollars (\$9.00) per hour.

(ii) In no less than twelve (12) nor more than eighteen (18) months from the Effective Date, the City shall increase the hourly gross compensation to ten dollars (\$10.00) per hour; provided, however, that in the case of Nonprofit Corporations and public entities, this adjustment shall only be made if the Joint Report issued by the Controller, Mayor's Budget Office, and Budget Analyst, pursuant to San Francisco Administrative Code Section 3.6, finds that the City has sufficient funds to pay the anticipated costs of the adjustment. A finding of "sufficient funds" shall mean that the City will not be required to reduce services in order to pay the anticipated costs of the adjustment.

(iii) For each of the next three (3) years after the adjustment provided in Subsection (a)(ii) is made, at annual intervals, the City shall make an additional adjustment of two and one-half (2.5) percent.

(B) For Contracts and Contract Amendments with parties other than Nonprofit Corporations or public entities entered into on or after the Effective Date of the Amendment, hourly gross compensation in the amount of ten dollars and seventy-seven cents (\$10.77). In order to prevent inflation from eroding the value of this rate, on January 1, 2008, the ten dollars and seventy-seven cent (\$10.77) rate shall increase by an amount corresponding to the prior year's increase, if any, in the CPI. Annually thereafter

on the first of January, the hourly gross compensation in effect for the prior calendar year shall increase by an amount corresponding to any prior year's increase in the CPI.

(C)(i) For Contracts and Contract Amendments with Nonprofit Corporations and public entities entered into on or after the Effective Date of the Amendment, hourly gross compensation in the amount of ten dollars and seventy-seven cents (\$10.77). It shall be the policy of the City to endeavor to maintain the hourly gross compensation for Contracts with Nonprofit Corporations and public entities equal to the rate that applies to for-profit Contractors. As such, this ten dollars and seventy-seven cent (\$10.77) rate shall increase by an amount corresponding to the prior year's increase, if any, in the CPI. These CPI adjustments shall be made on January 1, 2008 and every January 1 thereafter. Notwithstanding the provisions of this Subsection, when the Joint Report shows a projected shortfall, there shall be no automatic CPI increase in hourly gross compensation for Nonprofit Corporations and public entities as otherwise provided in this Subsection and the Mayor and the Board of Supervisors shall follow the procedures set forth in Subsections (C)(ii) and (iii).

(ii) **YEARS WITH PROJECTED BUDGET SHORTFALL.** When submitting the annual proposed budget to the Board of Supervisors for any upcoming fiscal year in which there is a projected shortfall, the Mayor shall transmit a written report to the Clerk and to each member of the Board of Supervisors stating whether the proposed budget contains funding to pay all of the costs of the projected CPI increase for Nonprofit Corporations and public entities for the upcoming fiscal year, as well as for any prior fiscal years for which the Agency has granted a waiver. If the proposed budget does not contain sufficient funding for all of such costs, the report shall state the extent to which any portion of the CPI increase has been funded in the proposed budget and, in addition, shall set forth the basis for the Mayor's determination that no alternative funding sources or prudent reductions in City expenses were available to enable the City to pay

the additional costs of the CPI increase for the upcoming fiscal year, and for any prior fiscal years for which the Agency has granted a waiver, without jeopardizing City operations.

(iii) When the Mayor has transmitted a report to the members of the Board providing notice that the proposed budget does not contain sufficient funding to pay the additional costs of the CPI increase for the upcoming fiscal year for Nonprofit Corporations and public entities and for any prior fiscal years for which the Agency has granted a waiver, the Budget and Finance Committee of the Board (or any successor committee as determined by the President of the Board) shall hold a hearing before adoption of the budget to consider the report and whether there are alternative funding sources or prudent reductions in City expenses available to enable the City to pay the additional costs of the CPI increase for the upcoming fiscal year, and for any prior fiscal year for which the Agency has granted a waiver, without jeopardizing City operations. The Board may amend the budget to provide full or partial funding for the CPI increase(s).

(iv) The hourly gross compensation for Nonprofit Corporations and public entities for the upcoming calendar year following the adoption of the budget shall be the rate required in the current calendar year, plus the amount of any CPI increase provided for in the budget. This rate shall apply notwithstanding the failure of the Mayor to make the report or the Board to conduct the hearing required by Subsection (C)(ii) and (iii). The Agency shall provide notice of the amount of hourly gross compensation for Nonprofit Corporations and public entities on the Agency's website. Except for those years in which the budget has sufficient funds to bring the rate for Nonprofit Corporations and public entities into parity with rate for for-profits, the Agency shall grant a blanket waiver applicable to all contracts with Nonprofit Corporations and public entities, which waiver shall authorize payment under such contract of hourly gross compensation that reflects either no CPI increase or only such increase as is covered by the budget. The Controller's Office shall provide notice to all

City departments of the hourly gross compensation for Nonprofit Corporations and public entities as determined by the Agency.

(v) Years with no one (1) percent projected budget shortfall. As provided in Subsection (a)(1)(C)(i), the hourly gross compensation for Nonprofit Corporations and public entities shall be adjusted in any year in which there is no projected budget shortfall by an amount corresponding to the prior year's increase, if any, in the CPI. When submitting the annual proposed budget to the Board of Supervisors for any upcoming fiscal year in which there is no projected shortfall but there is disparity between the rate for for-profit entities and for Nonprofit Corporations and public entities, the Mayor shall transmit a written report to the Clerk and to each member of the Board of Supervisors stating whether the proposed budget contains sufficient funding to bring the hourly gross compensation for Nonprofit Corporations and public entities into parity with the amount applicable to for-profit entities under Section (a)(1)(B).

(vi) When the Mayor has transmitted a report to the members of the Board providing notice that the proposed budget does not contain sufficient funding to bring the hourly gross compensation for Nonprofit Corporations and public entities into parity with the amount applicable to for-profit entities, the Budget and Finance Committee of the Board (or any successor committee as determined by the President of the Board) shall hold a hearing before adoption of the budget to consider the report. The Board may amend the budget to provide full or partial funding toward such parity. If additional funds are provided in the budget to obtain such parity or to bring Nonprofit Corporation and public entities closer to such parity, the hourly gross compensation for such entities shall increase to the extent provided in the budget and the Agency shall provide notice of the amount of hourly gross compensation on the Agency's website.

(2) Compensated time off (at the compensation rates specified in subsections (a)(1) of this Section) in an hourly amount that, on an annualized basis for a full-time employee, equals

twelve (12) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, for sick leave, vacation or personal necessity. Notwithstanding the foregoing, if a Contractor reasonably determines, in good faith, that the Contractor cannot comply with this requirement for compensated time off, the Contractor shall provide the Covered Employee with a cash equivalent of such compensated time off.

(3) Uncompensated time off in an hourly amount that, on an annualized basis for a full-time employee, equals ten (10) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, at the option of the Covered Employee, for sick leave for the illness of the Covered Employee or such Covered Employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild.

(b) By December 1 of each year, the Agency shall make available at its office and on its website the hourly rates required by this Section.

(c) When preparing proposed budgets and requests for supplemental appropriations for contract services, City departments that regularly enter into agreements for the provision of services by nonprofit corporations shall transmit with their proposal a written confirmation that the department has considered in its calculations the costs that the nonprofit corporations calculate that they will incur in complying with the Minimum Compensation Ordinance.

(d) Subject to the budgetary and fiscal provisions of the Charter, it shall be the policy of the City to ensure sufficient funding to prevent a reduction in the services to the community provided by Nonprofit Corporations and public entities. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.4. SAN FRANCISCO INTERNATIONAL AIRPORT.

The requirements of this Chapter shall apply to a written agreement (including, without limi-

tation, any lease, concession, franchise or easement agreement) for the exclusive use of real property that is owned by the City or of which the City has exclusive use, if such property is under the jurisdiction of the San Francisco Airport Commission and the term of the agreement exceeds twenty-nine (29) days in any calendar year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed twenty-nine (29) days, the agreement in question shall be subject to this Article only on and after the effective date of the instrument which causes the term to exceed twenty-nine (29) days. The requirements of this Chapter shall also apply to (i) any sublease or other agreement allowing other parties the exclusive right to occupy or use all or any portion of the property covered by the agreement and (ii) any agreement between a tenant or subtenant and any other person or entity to perform services on the airport property. Contractors who have agreements covered by this Section shall comply with the requirements of this Chapter insofar as they have "Covered Employees." For purposes of this Section, "Covered Employee" shall mean an employee who provides at least ten (10) hours of work on the property that is the subject of the agreement in a two-week Pay Period, adjusted proportionately if the Pay Period is other than two (2) weeks. Notwithstanding the provisions of this Section, all exemptions and waivers from the requirements of this Chapter that apply to Contracts shall also apply to agreements for the use of airport property described in this Section, except that the exemption in Section 12P.2(e)(16) does not apply to agreements for the use of real property owned by the City or of which the City has exclusive use if the property is under the jurisdiction of the San Francisco Airport Commission. Except as otherwise specifically provided, all requirements of this Chapter, and the monitoring and enforcement mechanisms provided in this Chapter, shall apply to agreements covered by this Section. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.5. CONTRACT REQUIREMENTS.

Every Contract or Contract Amendment entered into on or after the Effective Date shall provide as follows:

(a) For each hour worked by a Covered Employee during each Pay Period during the term of the Contract (as such term may be extended from time to time), Contractor shall provide to such Covered Employee no less than the Minimum Compensation as required in this Chapter.

(b) Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract. Such failure shall be determined by the City in its sole discretion.

(c) If, within thirty (30) days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under the terms of the Contract or under applicable law.

(d) The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for complaining to the City with regard to the employer's compliance or anticipated compliance with this Chapter, for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, or for seeking to assert or enforce any rights under this Chapter by any lawful means.

(e) The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter.

(f) The Contractor shall keep itself informed of the current Minimum Compensation, and shall provide prompt written notice to all Covered Employees of annual adjustments to the Minimum Compensation, as well as any written

communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders. Where a Contractor does not maintain or retain such records, or does not allow the Agency reasonable access to such records, it shall be presumed that the Contractor paid no more than the minimum wage required under State law. The Contractor shall have the burden of overcoming the presumption by clear and convincing evidence.

(h) The Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the Agency.

(i) The Contractor shall provide the City with access to pertinent records after receiving a written request to do so and being provided at least five (5) business days to respond.

(j) The Agency may conduct random audits of Contractors. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by this Article; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one (1) audit per Contractor every two (2) years for the duration of the Contract. Nothing in this Section shall be deemed to interfere with the authority of the Agency to investigate any report of an alleged breach of contract as provided in Section 12P.6.

(k) Any Contractor subject to the provisions of this Chapter shall promptly notify the Contracting Department of any subcontractors performing services covered by this Chapter and shall certify to the Contracting Department that it has notified the subcontractors of their obligations under this Chapter. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.5.1. ADDITIONAL CONTRACT REQUIREMENTS.

Every contract and contract amendment entered into on or after the effective date of the amendment, shall include the provisions set forth below, in addition to those requirements set forth in Section 12P.5. Where a conflict exists, the provisions of this section supersede those of Section 12P.5.

(a) Failure to comply with the requirements of this chapter shall constitute a material breach by contractor of the terms of the contract. The city in its sole discretion shall determine such failure.

(b) If a contractor fails to comply with the requirements of this chapter, the city shall have the right to pursue any rights or remedies available under this chapter, under the terms of the contract, and under applicable law, consistent with the procedures set forth in Section 12P.6.2.

(c) In order to monitor and determine compliance with this chapter, employees and agents of the city authorized to assist in the administration and enforcement of this chapter, including employees and agents of the agency, shall have the right to (1) engage in inspections of a contractor's job sites and conduct interviews with a contractor's employees and (2) conduct audits of contractors, provided that the city gives notice in advance of such audits and the audits are accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice.

(d)(1) Contractor may not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter.

(2) Contractor may not discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this chapter. Such rights include, but are not limited to, the right be paid the minimum compensation; the right to use compensated and uncompensated time off pursuant to this chapter; the right to file a complaint or

inform any person about any alleged violation of this chapter; the right to cooperate with the agency in its investigations of alleged violations of this chapter; and the right to inform any person of his or her potential rights under this chapter.

(3) Contractor may not implement any absence control policy to count compensated or uncompensated leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

(4) The provisions of this subsection (d) apply to any person who mistakenly but in good faith alleges violations of this chapter.

(5) If the contractor takes any adverse action against any person within 90 days of the person's doing any of the following, such adverse action shall raise a rebuttable presumption that the contractor has engaged in retaliation against the person for the exercise of one or more of the rights set forth in this Subsection (d): filing a complaint with the agency or a court alleging a violation of any provision of this chapter, informing any person about an employer's alleged violation of this chapter; cooperating with the agency or other persons in the investigation or prosecution of any alleged violation of this chapter; opposing any policy, practice, or act that is unlawful under this chapter; or informing any person of his or her rights under this chapter. (Ord. 212-07, File No. 070921, App. 9/14/2007; Added by Ord. 226-07, File No. 071193, App. 10/2/2007)

SEC. 12P.5.1. ADDITIONAL CONTRACT REQUIREMENTS.

Every Contract and Contract Amendment entered into on or after the Effective Date of the Amendment, shall include the provisions set forth below, in addition to those requirements set forth in Section 12P.5. Where a conflict exists, the provisions of this Section supersede those of Section 12P.5.

(a) Failure to comply with the requirements of this Chapter shall constitute a material breach by Contractor of the terms of the Contract. The City in its sole discretion shall determine such failure.

(b) If a Contractor fails to comply with the requirements of this Chapter, the City shall have the right to pursue any rights or remedies available under this Chapter, under the terms of the Contract, and under applicable law, consistent with the procedures set forth in Section 12P.6.2.

(c) In order to monitor and determine compliance with this Chapter, employees and agents of the City authorized to assist in the administration and enforcement of this Chapter, including employees and agents of the Agency, shall have the right to (1) engage in inspections of a Contractor's job sites and conduct interviews with a Contractor's employees and (2) conduct audits of Contractors, provided that the City gives notice in advance of such audits and the audits are accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice. (Added by Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.6. ADMINISTRATION AND ENFORCEMENT.

(a) The Agency shall monitor Contractors for compliance with the requirements of this Chapter and investigate complaints of violations. The Agency shall promulgate guidelines or rules for the administration of this Chapter. Such guidelines and rules shall not be adopted finally by the Agency until the Agency has held a public hearing. The guidelines and rules shall establish procedures for monitoring Contractors, receiving and investigating complaints, and determining whether a Contractor has breached a Contract based on the Minimum Compensation requirements of this Chapter. The guidelines and rules shall also establish procedures permitting Contractors to provide payroll information in confidence to the City for purposes of monitoring compliance under this Chapter and authorizing disclosure of the information by the City only when necessary for enforcement purposes. Upon the request of a Contracting Department, the Agency shall also issue a determination as to whether a particular instrument constitutes a Contract or agreement is subject to the requirements of this Chapter. The Agency shall report

annually on compliance with this Chapter to the Board of Supervisors. Such report shall include cumulative information regarding the number of waivers granted by the Agency pursuant to Sections 12P.7 and 12P.8 of this Chapter and statistical data regarding such waivers.

(b) If the Agency determines that a Contractor is in breach of any term required to be contained in the Contract under this Chapter, the Agency shall notify the Contracting Department of its findings and of any action that the Agency requests the Contracting Department to take with respect to such breach. In order to ensure compliance with this Chapter and to enhance the monitoring activities of the Agency, the City desires to encourage reporting by Covered Employees of any breach. The Agency shall investigate any such report. The Agency shall keep confidential, to the maximum extent permitted by applicable laws, the Covered Employee's name and other identifying information.

(c) In addition to any other rights or remedies available to the City under the term of the Contract or under applicable law, the City shall have the following rights, in the event of such failure by the Contractor:

(1) The right, at the discretion of the Agency, to charge the Contractor an amount equal to the difference between the Minimum Compensation levels required by this Chapter and any compensation actually provided to each Covered Employee who was not paid in accordance with the terms of this Chapter, together with simple annual interest of ten (10) percent on such amount from the date payment was due;

(2) The right, at the discretion of the Agency, to set off all or any portion of the amount described in the preceding clause (1) of this Subsection against amounts due to Contractor under the Contract;

(3) The right, at the discretion of the Contracting Department, to terminate the Contract in whole or in part;

(4) In the event of a breach by Contractor of the covenant referred to in Section 12P.5(d), the right, at the discretion of the Agency, to require reinstatement of the affected Covered Employee

and, if necessary, seek a court order for such reinstatement or to obtain other appropriate equitable relief and, in addition, to require payment of any wages lost because of the Contractor's discriminatory or retaliatory action, together with simple annual interest of up to ten (10) percent from the date payment should have been made; and

(5) The right, at the discretion of the Agency or the Contracting Department, to bar a Contractor from entering into future contracts with the City for three (3) years.

(6) The City may bring a civil action against the Contractor to pursue the remedies provided by this Chapter and other applicable law. The prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' fees.

Each of these rights shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to each applicable Covered Employee.

When this Chapter authorizes the Agency to charge interest, in determining the appropriate amount to charge the Agency shall give due consideration to the size of the Contractor's business, the Contractor's good faith, the gravity of the violation, and the history of previous violations.

(d) Each Covered Employee shall be a third-party beneficiary under the Contract as set forth in this subsection and in subsection (e) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of any contractual covenant described in Section 12P.5(a) or Section 12P.5(d), but only after the Covered Employee has provided the notice and participated in the administrative review hearing provided in this subsection. The Covered Employee shall give written notice of a breach to the Contractor and to the Agency. If the Agency and the Contracting Department determine that no breach has occurred, or if the Contracting Department fails to obtain the cure of a breach by the Contractor within sixty (60) days after receipt of notice by the Covered Employee, the

Covered Employee may request an administrative review hearing. The Covered Employee must request such a hearing within ninety (90) days after giving written notice of the breach. Unless the Covered Employee withdraws the request for a hearing, the Agency shall conduct, or arrange to have conducted, a hearing. The Employee shall have the right to attend the hearing personally or through a designated representative. The Agency shall notify the Contractor of the hearing so that the Contractor may attend and present evidence. After the hearing is completed, the person conducting the hearing shall determine whether the Contractor has breached the Contract. Upon the issuance of a written decision finding a breach, and after a waiting period of twenty-one (21) days, the Covered Employee may bring an action against the Contractor for such breach in the Superior Court of the State of California, as appropriate, unless the City has commenced an action against the Contractor based on the breach, or obtained compliance, within the twenty-one-day waiting period and provided notice to the Covered Employee of that action. If the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with simple annual interest of ten (10) percent on such amount from the date payment was due; and (2) in the event of a breach by Contractor of the covenant referred to in Section 12P.5(d), the right to seek reinstatement or to obtain other appropriate equitable relief.

(e) In the event of any legal action or proceeding between Contractor and a Covered Employee arising from this Agreement, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection with such action or proceeding; provided, however, that a Contractor shall be entitled to such costs and expenses only if the court determines that the Covered Employee's action or proceeding was frivolous, vexatious or other-

wise an act of bad faith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment.

(f) The City shall maintain the confidentiality of payroll information obtained in the course of monitoring compliance with this Chapter and shall disclose such information only as necessary for enforcement purposes.

(g) The Agency shall develop a procedure for obtaining an assurance from Contractors when they sign an agreement subject to this Chapter that they comply with the requirements of this Chapter, such as the signing of an affidavit of compliance.

(h) The Agency may compromise and settle unlitigated claims that Contractors have violated the requirements of this Chapter, including Contractors that have agreements for real property as set forth in Section 12P.4.

(i) All Contractors and Contracting Departments shall cooperate fully with the Agency in connection with any investigation of an alleged violation of this Chapter or with any inspection conducted by the Agency. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.6.1. LIQUIDATED DAMAGES.

Every Contract and Contract Amendment entered into on or after the Effective Date of the Amendment shall contain a provision in which the Contractor agrees:

(a) To be liable to the City for liquidated damages as provided in this Section;

(b) To be subject to the procedures governing enforcement of a breach of the terms of a Contract, which terms are required by this Chapter, as set forth in Section 12P.6.2;

(c) That Contractor's commitment to pay the Minimum Compensation as required in this Chapter is a material element of the City's consideration for the Contract and that the failure of Contractor to comply will cause significant and substantial harm to the City and the public which is extremely difficult to determine or quan-

tify, and that the liquidated damages set forth in this Section are reasonable amounts to pay for the harm caused by the Contractor's non-compliance;

(d) That for any failure to provide the required Minimum Compensation (hourly wage and time off), the Agency may require the Contractor to pay the City liquidated damages of up to one hundred dollars (\$100.00) for each one-week pay period for each employee not provided the required compensation. The Agency shall adjust this amount proportionately for Contractors that use a pay period other than one (1) week;

(e) That for any failure to provide reports to the City or access to pertinent records, or any failure to cooperate with any audit, inspection or investigation conducted by the Agency, the Agency may require the Contractor to pay the City liquidated damages of up to one thousand dollars (\$1,000.00);

(f) That while liquidated damages in the maximum amounts set forth in this Section are a reasonable estimate of the harm caused by the Contractor's non-compliance with contractual provisions required by this Chapter, the Agency may determine that less than the full amount is warranted depending on the circumstances of each case. The Agency shall give due consideration to the following factors in determining the amount of liquidated damages: the size of the Contractor's business, the Contractor's good faith, the gravity of the violation, the history of previous violations, the failure to comply with record-keeping, reporting, anti-retaliation or other non-wage requirements, and the extent to which the imposition of liquidated damages would undermine the purpose of this Chapter by imposing unreasonable financial burdens on the Contractor, thereby restricting its ability to fulfill its obligations under this Chapter. (Added by Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.6.2. INVESTIGATION AND DETERMINATION OF VIOLATIONS.

(a) **Determination of Violation.** Upon determining that a Contractor may have violated the terms of a Contract required under this

Chapter, the Agency shall send written notice to the Contractor of the possible violation and of the Contractor's right to respond to the Agency's initial determination by submitting pertinent documents and other information. The written notice shall also notify the Contractor that the Agency is authorized to direct the Controller to withhold payment otherwise due to the Contractor pursuant to the provisions of subsection (e). If after providing the Contractor with a reasonable opportunity to respond to the allegations the Agency makes a final determination that a violation has occurred, the Agency shall provide a written notice of violation to the Contractor.

(b) **Right to Appeal.** The Contractor may appeal the Agency's final determination. The Contractor must file an appeal with the Agency in writing, specifying the basis for contesting the determination, no later than fifteen (15) days after the date of the notice of determination. Failure to file an appeal in writing with the Controller within fifteen (15) days shall cause the Agency's determination to be deemed a final administrative decision by the City.

(c) **Administrative Hearing.**

(1) Within fifteen (15) days after the Agency receives an appeal, the Controller shall appoint a hearing officer and shall notify the Agency and the Contractor.

(2) The hearing officer shall promptly set a date for a hearing. The hearing shall commence within forty-five (45) days of the notification of the appointment of the hearing officer and conclude within seventy-five (75) days of such notification, unless all parties agree to an extended period.

(3) The Agency shall have the burden of producing evidence that the Contractor has violated the requirements of this Chapter and the burden of proving the violation.

(d) **Hearing Officer's Decision.**

(1) Within thirty (30) days of the conclusion of the hearing, the hearing officer shall issue a written decision consisting of findings and a decision affirming, modifying, or vacating the Agency's determination. If the hearing officer vacates the Agency's determination in its en-

tirety, that decision shall also vacate any assessment of liquidated damages. If the hearing officer affirms the Agency's determination, the hearing officer shall issue a decision upholding the Agency's determination, including the amount of the liquidated damages assessed by the Agency. With respect to liquidated damages, the hearing officer's jurisdiction to modify the Agency's assessment is limited and the following procedures apply. If the hearing officer modifies the Agency's determination, the hearing officer shall transmit the decision to the Agency, which shall within five (5) business days modify the assessment of liquidated damages consistent with the hearing officer's decision based on the criteria set forth in Section 12P.6.1 and transmit the modified assessment to the hearing officer. Upon receiving the modified assessment from the Agency, the hearing officer shall within three (3) business days issue a final decision which shall include the amount of the liquidated damages assessment as modified by the Agency.

(2) The decision of the hearing officer shall be final. The Contractor may seek review of the hearing officer's decision only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure, section 1094.5, as may be amended from time to time.

(3) The failure of the Controller or hearing officer to comply with the time requirements of this Section shall not cause the Controller or the hearing officer to lose jurisdiction over an appeal from the Agency's determination filed under this Section.

(4) Upon receiving the hearing officer's decision affirming or modifying the Agency's determination, the Contractor shall take the corrective action, including the payment of liquidated damages, if any, within fourteen (14) days of receiving the hearing officer's decision. If a Contractor fails to take corrective action within the time required by the provisions of this Section, the City may immediately pursue all available remedies against the Contractor.

(e) **Withholding of Payments by Controller.**

(1) When the Agency sends notice to a Contractor under Section 12P.6.2(a) of its final determination that the Contractor has violated the

requirements of this Chapter and of the Contractor's right of appeal to the Controller, the Agency may direct the Contracting Department and the Controller to deduct from the payment or payments otherwise due to the Contractor the amounts that the Agency has determined the Contractor must pay to Covered Employees for violation of this Chapter and to the City for liquidated damages. The Controller, in issuing any warrant for any such payment, shall deduct the amounts specified by the Agency.

(2) The Controller shall withhold these funds until (A) the hearing officer issues a decision finding that the Contractor does not owe all or a portion of the amount withheld, in which case the Controller shall release funds to the Contractor consistent with the hearing officer's decision or (B) the Contractor consents to the use of the funds to pay Covered Employees and/or the City the amounts that the Agency or hearing officer found due. As to any funds being withheld for which neither (A) nor (B) applies, the Controller shall retain the funds until the hearing officer's decision is no longer subject to judicial review, at which time the Controller shall distribute the funds as provided in subsection (e)(3) of this Section, provided that this action is consistent with any final determination of a court of competent jurisdiction. Notwithstanding the provisions of this subsection, the Agency may authorize the release of payments withheld from the Contractor under this Section if the Agency determines that the continued withholding of funds imposes a substantial risk of endangering public health or safety, interfering with a service or project that is essential to the City, or having an unreasonable adverse financial impact on the City.

(3) The Controller shall distribute amounts withheld from Contractors under this Section in the following order:

(A) The Agency shall make its best efforts to distribute any amounts that are determined due to the Contractor's Covered Employees to those individuals, or may require the Contractor to do so. The Controller shall hold the balance of any such amounts for Covered Employees whom the

Agency and Employer, despite best efforts, cannot locate. Funds held for at least two (2) years shall be deposited in the City's General Fund.

(B) Sums imposed as liquidated damages shall be deposited in the City's General Fund. (Added by Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.7. WAIVERS BY THE AGENCY.

The Agency shall waive the requirements of this Chapter where the Contracting Department has certified in writing to the Agency, and the Agency has found that:

(a) The needed services under the applicable Services Contract are available only from a sole source; and the prospective Contractor is not currently disqualified from doing business with the City or any other governmental agency; or

(b) Pursuant to Chapters 6 and 21 of the Administrative Code, the Contract is necessary to respond to an emergency which endangers the public health or safety; and no entity that complies with the requirements of this Chapter and is capable of responding to the emergency is immediately available to perform the required services; or

(c) There are no qualified responsive bidders or prospective vendors that comply with the requirements of this Chapter; and the Contract is for a service, project, or property that is essential to the City or the public; or

(d) The Services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity; purchase under such arrangement will substantially reduce the City's cost of purchasing such Services; and purchase under such an arrangement is in the best interest of the City or the public. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.8. ADDITIONAL WAIVERS BY THE AGENCY—NONPROFIT CORPORATIONS.

(a) A Nonprofit Corporation may seek a waiver from the requirements of Section 12P.3(a)(1) if the highest paid managerial posi-

tion in the organization earns a salary which, when calculated on an hourly basis, is not more than six (6) times the lowest wage paid by the organization to a Covered Employee. The Nonprofit Corporation shall provide to the Contracting Department a written statement, prepared and signed by the Nonprofit Corporation, setting forth an explanation of the economic hardship to the Nonprofit Corporation or the negative impact on services that would result from compliance with this Chapter. If the Contracting Department determines that the written explanation is adequate to justify the waiver and that substantial evidence supports the written explanation, it shall recommend the requested waiver to the Agency. The Agency shall grant the requested waiver. Each waiver shall be effective for a period of up to one (1) year, and subsequent waivers may be requested and granted.

(b) If City's budget contains funding for all or a portion of a CPI increase for Nonprofit Corporations for the fiscal year, but a Nonprofit Corporation does not receive an adequate increase in its contract allocation to pay for the CPI increase for the fiscal year, the Nonprofit Corporation may seek a one-year waiver from the CPI increase or from that portion of the CPI increase that is unfunded. The Nonprofit Corporation shall provide to the Contracting Department a written statement, prepared and signed by the Nonprofit Corporation, demonstrating that it has not received adequate funding. The Contracting Department shall report to the Agency whether the Nonprofit Corporation received from the Contracting Department an increase in its contract allocation to pay for the CPI increase and, if it received funding to pay only a portion of the CPI increase, what portion of the increase was funded. If the Department has not provided adequate funding to the Nonprofit Corporation for the full CPI increase, it shall explain the reason in its statement to the Agency. If the Department certifies that the Nonprofit Corporation did not receive an adequate increase in its contract allocation to pay for the CPI increase, the Agency shall grant a one-year waiver from the CPI increase or the unfunded portion of the increase as reported by the Contracting Depart-

ment. Each waiver shall be effective for a period of up to one (1) year, and subsequent waivers may be requested and granted. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.9. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.

The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the Contractor is providing to or on behalf of the San Francisco Public Utilities Commission services relating to:

(a) The provision, conveyance or transmission of wholesale or bulk water, electricity or natural gas; or

(b) Ancillary requirements such as spinning reserve, voltage control, or loading scheduling, as required for ensuring reliable services in accordance with good utility practice; provided, however, that:

(1) The purchase of such services may not practically be accomplished through the City's standard competitive bidding procedures; and

(2) The Contractor is not providing direct, retail services to end users within the geographic boundaries of the City. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000; Ord. 212-07, File No. 070921, App. 9/14/2007)

SEC. 12P.10. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.11. CITY DEPARTMENTS TO COOPERATE WITH AGENCY.

All City departments shall cooperate with the Agency by providing such information and assistance as the Agency shall request with respect to implementation of this Chapter. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.12. RELATIONSHIP TO OTHER REQUIREMENTS.

This Chapter provides a minimum level of compensation and shall not be construed to preempt or otherwise affect any other law, regulation or requirement providing a higher level of compensation. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.13. REPORT BY AIRPORT DIRECTOR.

One year after the Effective Date, the Airport Director shall prepare a written report assessing the impact of this Chapter on Airport property contracts, including any economic impact, benefits, and recommended changes. The Airport Director shall submit the report to the Clerk of the Board, who shall schedule a hearing before the appropriate committee to consider the report. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.14. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.15. EFFECTIVE DATE.

This Chapter shall become effective 30 days after it is adopted. This Chapter is intended to have prospective effect only. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

SEC. 12P.16. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Ord. 216-00, File No. 001272, App. 8/9/2000)

CHAPTER 12Q: HEALTH CARE ACCOUNTABILITY

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SEC. 12Q.1. TITLE.

This Chapter shall be known as the "San Francisco Health Care Accountability Ordinance." (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2. DEFINITIONS.

As used in this Chapter, the following capitalized terms shall have the meanings set forth in the following provisions. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.1. AGENCY.

"Agency" shall mean the Office of Labor Standards Enforcement. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.2.2. AGENCY DIRECTOR.

"Agency Director" shall mean the Director of the Office of Labor Standards Enforcement or his or her designee. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.2.3. CITY.

"City" shall mean the City and County of San Francisco. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.4. CONTRACT.

(a) "Contract" shall mean an agreement between a Contracting Department and any person or entity that provides for public works or public improvements to be purchased, or for services to be performed, at the expense of the City. The term "Contract" also means an agreement between a Tenant or Subtenant and any person or

entity to perform services on property covered by a Lease. The term "Contract" includes "Contract Amendment."

(b) Notwithstanding the foregoing, the term "Contract" does not include the following:

(1) Agreements for a duration of less than one (1) year. Contracting Departments and Tenants and Subtenants are prohibited from entering into multiple contracts of short duration with the proposed Contractor in order to evade the requirements of this Chapter;

(2) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. Where an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a "Contract" if a preponderance of the contract amount is for goods;

(3) Agreements entered into pursuant to settlement of legal proceedings;

(4) Agreements for urgent or specialized advice, consultation or litigation services for the City Attorney's Office where the City Attorney finds that it would be in the best interests of the City not to include the requirements of this Chapter;

(5) Agreements with any person or entity if the amount of the agreement is less than \$25,000 (in the case of a for-profit entity or person) or less than \$50,000 (in the case of a Nonprofit Corporation). However, if the Contracting Party has multiple agreements with the City in a given fiscal year (which agreements would be considered "Contracts" under this Chapter except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such agreements is \$75,000 or more, the provisions of this Chapter shall apply to each such agreement from the date on which the triggering Contract is executed;

(6) Agreements for the investment, management or use of trust assets where compliance would violate the fiduciary duties of the trustee;

(7) Agreements executed prior to the Effective Date (unless and until a Contract Amendment is executed);

(8) Agreements executed after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, unless the bid packages or requests for proposals are materially amended on or after the Effective Date;

(9) Agreements involving the expenditure by the City of special funds or other non-General Fund revenues to the extent that application of this Chapter would require the City to use General Fund monies to supplement the special funds or other non-General Fund revenues to maintain the current level of services;

(10) Agreements that require the expenditure of grant funds awarded to the City by another entity. If a Contract is funded both by grant funds and non-grant funds, the entire Contract is exempt; provided that, if the use of the grant funds is severable from the non-grant funds, the Contract is exempt only with respect to the use of the grant funds;

(11) Agreements pursuant to which the City awards a grant to a Nonprofit Corporation;

(12) Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation Authority, the San Francisco Parking Authority or the San Francisco Health Authority;

(13) Agreements for employee benefits to be provided to City employees, where the Director of Human Resources finds that no person or entity is willing to comply with this Chapter and is capable of providing the required employee benefits;

(14) Agreements for the investment, management or use of City monies where the Treasurer finds that requiring compliance with this Chapter will violate the Treasurer's fiduciary duties and for the investment of retirement, health or other funds held in trust pursuant to Charter, statute, ordinance or MOU where the official or officials responsible for investing or

managing such funds find that requiring compliance with this Chapter will violate their fiduciary duties;

(15) Loan agreements and agreements made in connection with loans or grants under which the City, as creditor or grantor, is providing funds to be used by the debtor or grantee to

(A) Acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed;

(B) Construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate-income households; or

(C) Rehabilitate improvements owned or leased by the debtor or grantee; and

(16) Agreements between a Tenant or Subtenant and a Contractor to perform services on property covered by a Lease if the Contractor does not provide such services on a regular and on-going basis. For purposes of this exemption, if employees of the Contractor I and any Subcontractors cumulatively work on the Lease property less than 130 days within a 12-month period, the agreement shall not be considered regular and on-going. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.5. CONTRACT AMENDMENT.

(a) "Contract Amendment" shall mean a modification to an agreement which extends the term, increases the total amount of payments due from the City (except where such increase is due solely to cost of living adjustments), or modifies the scope of services to be performed by the Contractor; provided that the resulting agreement falls within the definition of "Contract."

(b) Notwithstanding the foregoing, "Contract Amendment" does not include a onetime extension of the term of a Contract for up to 6 months, or a construction change order, modification or amendment to a Contract executed by the City for its benefit (as determined by the Agency Director). (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.6. CONTRACTING DEPARTMENT.

"Contracting Department" shall mean the City department, office, board, commission or other City agency that enters into the applicable Contract or Lease on behalf of the City. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.7. CONTRACTING PARTIES.

"Contracting Parties" shall mean Contractors, Subcontractors, Tenants, and Subtenants. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.8. CONTRACTOR.

"Contractor" shall mean the person or entity that enters into a Contract with the City. The term "Contractor" also means any person or entity that enters into a Contract with a Tenant or Subtenant to perform services on property covered by a Lease. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.9. COVERED EMPLOYEE.

(a) "Covered Employee" shall mean:

(1) An Employee of a Contractor or Subcontractor who works on a City Contract or Subcontract for 20 hours or more per Week:

(A) Within the geographic boundaries of the City; or

(B) On real property owned or controlled by the City, but outside the geographic boundaries of the City; or

(C) Elsewhere in the United States; and

(2) An Employee of a Tenant or Subtenant who works 20 hours or more per Week on property that is covered by a Lease or Sublease; and

(3) An Employee of a Contractor or Subcontractor that has a Contract or Subcontract to perform services on property covered by a Lease or Sublease if the Employee works 20 hours or more per Week on the property.

(4) A Contractor or Subcontractor may not divide an employee's time between working on a City contract and working on other duties with the intent of reducing the number of Covered Employees working on the Contract to evade

compliance with this Chapter. Such action shall constitute a violation of this Chapter. Beginning on July 1, 2002, the number of hours an employee must work per Week in order to be considered a "Covered Employee" pursuant to this Subsection (a)(1), (2) and (3) shall be 15 or more.

(b) Notwithstanding the foregoing, the term "Covered Employee" does not include the following:

(1) Any Employee (A) under the age of eighteen (18) who is a student, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee, or (B) who is (i) a temporary Employee hired for a time-limited period, and (ii) for that period is receiving academic credit or completing mandatory hours for professional licensure or certification, and (iii) the Employee does not replace, displace or lower the wage or benefits of an existing position or Employee; or

(2) Any Employee employed as a trainee in a bona fide training program consistent with Federal law, which training program enables the Employee to advance into a permanent position, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or

(3) Any Employee that the Contracting Party is required to pay no less than the "prevailing rate of wage" in accordance with Section A7.204 of Appendix A to the City's Charter or any provision of the San Francisco Administrative Code; or

(4) Any disabled Employee who:

(A) Is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or

(B) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.

(5) Any Employee of a Nonprofit Corporation who is a temporary employee, hired on an hourly or per diem basis to replace a regular employee during a temporary absence from the workplace. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.2.10. EFFECTIVE DATE.

"Effective Date" shall mean the applicable effective date specified in Section 12Q.9 of this Chapter. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.11. EMPLOYEE.

"Employee" shall mean any person who is employed by a Contracting Party, including part-time and temporary employees. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.12. HEALTH DIRECTOR.

"Health Director" shall mean the Director of the Department of Public Health. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.13. LEASE.

(a) "Lease" shall mean a written agreement (including, without limitation, any lease, concession or license) in which the City gives to another party the exclusive use of City Property for a term exceeding twenty-nine (29) consecutive days in any calendar year, whether by single or cumulative instruments. "City Property" means real property that is owned by the City or of which the City has exclusive use, if such property is located within the City or is under the jurisdiction of the San Francisco Airport Commission. If cumulative instruments cause the term of the agreement to exceed twenty-nine (29) consecutive days, the agreement in question shall be subject to this Chapter only on and after the effective date of the instrument which causes the term to exceed twenty-nine (29) consecutive days. For the purposes of this definition and the definition of Sublease, "exclusive use" means the right to use or occupy real property to the exclusion of others, subject to the rights reserved by the party granting such exclusive use. "Lease" includes "Lease Amendment."

(b) Notwithstanding the foregoing, the term "Lease" does not include the following:

(1) Agreements granting a franchise or easement;

(2) Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation Authority, the San Francisco Parking Authority or the San Francisco Health Authority;

(3) Agreements entered into pursuant to settlement of legal proceedings;

(4) Revocable at-will use or encroachment permits for the use of or encroachment on City Property, regardless of the ultimate duration of such permits;

(5) Street excavation, street construction or street use permits or other regulatory permits;

(6) Agreements for the use of a City right-of-way, including circumstances where a contracting utility has the power of eminent domain;

(7) Agreements governing the use of City Property under the jurisdiction of the Recreation and Park Department primarily for recreational activities. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.14. LEASE AMENDMENT.

(a) "Lease Amendment" shall mean a modification to a Lease that extends the term or materially changes any other provision of the Lease.

(b) Notwithstanding the foregoing, "Lease Amendment" does not include a one-time extension of the term of a Lease for up to 6 months, or relocation of the leased premises at the request of the City for its benefit or convenience (as determined by the Agency Director). (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.15. NONPROFIT CORPORATION.

"Nonprofit Corporation" shall mean a non-profit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and

all rules and regulations promulgated under such Section. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.16. WEEK.

"Week" shall mean a consecutive seven-day period. If the Contracting Party's regular pay period is other than a seven-day period, the number of hours worked by an employee during a seven-day Week for purposes of this Chapter; shall be calculated by adjusting the number of hours actually worked during the Contracting Party's regular pay period to determine the average over a seven-day Week. However, such period of averaging shall not exceed a duration of one month. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.17. SUBCONTRACT.

(a) "Subcontract" shall mean an agreement between a Contractor and a person or entity pursuant to which the person or entity agrees to perform all or a portion of the services covered by a Contract.

(b) Notwithstanding the foregoing, the term "Subcontract" does not include:

(1) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. When an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a "Subcontract" if a preponderance of the Contract amount is for goods;

(2) Agreements with a public entity, unless the public entity is the San Francisco Redevelopment Agency, the San Francisco LAFCO, the San Francisco Transportation Authority, the San Francisco Parking Authority or the San Francisco Health Authority. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.18. SUBCONTRACTOR.

"Subcontractor" shall mean a person or entity that enters into a Subcontract. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.19. SUBLEASE.

(a) "Sublease" shall mean any agreement with any person or entity for the exclusive right to occupy or use all or any portion of City Property covered by a Lease.

(b) Notwithstanding the foregoing, the term "Sublease" does not include each of the circumstances set forth in Section 12Q.2.13(b) that constitutes an exclusion from the definition of "Lease." (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.20. SUBTENANT.

"Subtenant" shall mean a person or entity that enters into a Sublease. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.2.21. TENANT.

"Tenant" shall mean the person or entity that enters into a Lease with the City. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.3. HEALTH CARE ACCOUNTABILITY COMPONENTS.

(a) With respect to each Covered Employee who either resides in San Francisco (regardless of where the Covered Employee provides services) or provides services covered by this Chapter in San Francisco, each Contracting Party shall do one of the following, at the Contracting Party's option:

(1) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the Health Director and approved by the Health Commission. The minimum standards shall provide for a maximum period for each Covered Employee's health benefits to become effective, no later than the first of the month that begins after 30 days from the start of employment on a covered Contract, Subcontract, Lease or Sublease. The Health Commission shall review such standards at least once every two years to ensure that the standards stay current with State and Federal regulations and existing health benefits practices; or

(2) For each Week in which the Covered Employee works the applicable minimum number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"), pay to the City \$2.00 per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed \$80 in any Week. The City shall appropriate money received pursuant to this Subsection (a)(2) for the use of the Department of Public Health. The Department of Public Health shall use the monies appropriated for staffing and other resources to provide medical care for the uninsured. The Health Commission may increase this hourly rate and Weekly maximum in accordance with either the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or the increase in average Health Maintenance Organization (HMO) premiums in California, depending on which the Health Commission determines better reflects the cost of providing health care in the Bay Area; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution; or

(3) Participate in a health benefits program developed by the Health Director in consultation with the Agency. The Health Director shall obtain Health Commission approval of the program before implementing it. The Health Director shall seek such approval within twelve (12) months after this Chapter is finally approved. Prior to implementation of the health benefits program provided in this Subsection (a)(3), each Contracting Party shall comply with Subsection (a)(1) or (a)(2). After the Health Director implements the program, in addition to the options provided in Subsections (a)(1) and (a)(2), Contracting Parties may satisfy their obligations under this Chapter by complying with the requirements of the health benefits program. In developing the program, the Health Director shall (i) attempt to make health coverage available for uninsured Covered Employees and, if feasible, any other person employed by a Con-

tracting Party who works less than 20 hours per week on a City contract, or other uninsured City residents; (ii) use public health facilities to the maximum extent practicable; (iii) make the program economically viable; and (iv) provide a mechanism for funding which relies, as much as possible, on contributions by participating employers and employees.

(b) With respect to each Covered Employee who does not reside in San Francisco, but who provides services covered by this Chapter at the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall do one of the options set forth in Subsection (a), at the Contracting Party's option.

(c) With respect to each Covered Employee who does not reside in San Francisco, and does not provide services covered by this Chapter in San Francisco, at the San Francisco Airport or at the San Bruno Jail, each Contracting Party shall do one of the following, at the Contracting Party's option:

(1) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the Health Director and approved by the Health Commission pursuant to Subsection 12Q.3(a)(1) above; or

(2) For each Week in which the Covered Employee works the applicable minimum number of hours set forth in Section 12Q.2.9(a) (definition of "Covered Employee"), pay to the Covered Employee an additional \$2.00 per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed \$80 in any Week, to enable the employee to obtain health insurance coverage. This represents the City's current estimate of the average cost of obtaining individual health insurance benefits. The Health Commission may increase this hourly rate and Weekly maximum in accordance with either the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or the increase in average Health Maintenance Organization (HMO) premiums in California, depending on which the Health Commission determines better reflects

the cost of providing health care in the Bay Area; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution.

(d) When preparing proposed budgets and requests for supplemental appropriations for contract services, City departments that regularly enter into agreements for the provision of services by nonprofit corporations shall transmit with their proposal a written confirmation that the department has considered in its calculation the costs that the nonprofit corporations calculate that they will incur in complying with the Health Care Accountability Ordinance.

(e) Notwithstanding the above, if, at the time a Contract, Subcontract, Lease or Sublease is executed, the Contracting Party has 20 or fewer employees (or, in the case of a Nonprofit Corporation, 50 or fewer employees), including any employees the Contracting Party plans to hire to implement the Contract, Subcontract, Lease or Sublease, the Contracting Party shall not be obligated to provide the Health Care Accountability Components set forth in this Section 12Q.3 to its Covered Employees. In determining the number of employees had by a Contracting Party, all employees of all entities that own or control the Contracting Party and that the Contracting Party owns or controls, shall be included. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.4. CONTRACTUAL OBLIGATIONS.

(a) Each Contracting Party that enters into a Contract, Subcontract, Lease, or Sublease shall agree:

(1) To comply with the requirements of this Chapter, including the requirement to choose and perform one of the Health Care Accountability Components set forth in Section 12Q.3;

(2) To comply with regulations adopted by the Agency pursuant to this Chapter;

(3) To maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract or Subcontract. If the Contracting Party fails to maintain records that accurately reflect the number of hours each employee has worked on the City Contract or Subcontract, it shall be presumed that any employee who has worked on a City Contract or Subcontract is a Covered Employee as defined in Section 12Q.2.9.

(4) To provide information and reports to the City in accordance with any reporting standards promulgated by the Agency in consultation with the Director of Health;

(5) To provide the City with access to pertinent payroll records relating to the number of employees employed and terms of medical coverage after receiving a written request to do so and being provided at least ten (10) business days to respond;

(6) To allow the City to inspect Contracting Parties' job sites and have access to Contracting Parties' employees in order to monitor and determine compliance with this Chapter;

(7) To cooperate with the Agency when it conducts audits;

(8) To include in every Contract, Subcontract, Lease, or Sublease subject to this Chapter provisions requiring compliance with this Chapter, consistent with any directives or standards adopted by the Agency;

(9) To notify the Contracting Department promptly of any Subcontractors performing services covered by this Chapter and certify to the Contracting Department that it has notified the Subcontractors of their obligations under this Chapter; and

(10) To represent and warrant that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Chapter.

(b) A Contracting Party shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City regarding the Contracting Party's noncompliance or anticipated noncompliance with this Chap-

ter, for opposing any practice proscribed by this Chapter, for participating in proceedings related to this Chapter, or for seeking to assert or enforce any rights under this Chapter by any lawful means. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.5. ADMINISTRATION AND ENFORCEMENT.

(a) The Agency, in consultation with the Department of Public Health, shall promulgate regulations for the interpretation and administration of this Chapter, which regulations shall be adopted only after public hearing. The regulations shall establish procedures for monitoring Contractors, receiving and investigating complaints, and providing administrative hearings to determine whether a Contractor has breached a Contract, Subcontract, Lease or Sublease based on the requirements of this Chapter.

(b) The Agency shall monitor Contracting Parties for compliance and investigate complaints of violations. The Agency, in consultation with the City Attorney, shall develop contractual provisions for use by Contracting Departments designed to enable the City to pursue the remedies set forth in this Section against every person or entity required to comply with this Chapter.

(c) The Agency, in consultation with the Department of Public Health, may conduct audits of Contracting Parties, although such audits shall be conducted through an examination of records at a mutually agreed upon time and location within ten (10) days of written notice.

(d) The Agency and the Department of Public Health shall provide an annual joint report to the Board of Supervisors on compliance with this Chapter. Such report shall include cumulative information regarding the number of waivers granted pursuant to this Chapter.

(e) A Covered Employee may report to the Agency in writing any alleged violation of this Chapter by a Contracting Party or other person or entity subject to this Chapter. The Agency shall investigate any such report. If the Agency

determines that any person or entity has violated this Chapter, the Agency shall notify the Contracting Department of its findings. In order to ensure compliance with this Chapter and to enhance the monitoring activities of the Agency, the City encourages reporting by Covered Employees pursuant to this Subsection. The Agency shall keep confidential the Covered Employee's name and other identifying information, to the maximum extent permitted by applicable law.

(f) In addition to any other rights or remedies available to the City under the terms of any agreement of a Contracting Party or under applicable law, the City shall have the following rights:

(1) The right, at the discretion of the Agency, to charge the Contracting Party for any amounts that the Contracting Party should have paid to the City for hours worked by Covered Employees pursuant to Section 12Q.3(a)(2) and (b), or to Covered Employees pursuant to Section 12Q.3(c)(2), together with simple annual interest of 10% on such amount from the date payment was due;

(2) The right, at the discretion of the Agency, to assess liquidated damages as provided in Section 12Q.5.1 and 12Q.5.2;

(3) The right, at the discretion of the Agency, to set off all or any portion of the amount that a Contracting Party is required to pay to the City pursuant to preceding Subsections (g)(1) and (2) against amounts due to a Contracting Party;

(4) The right, at the discretion of the Contracting Department, to terminate the Contract or Lease in whole or in part;

(5) The right, at the discretion of either the Contracting Department or the Agency, to bar a Contracting Party from entering into future Contracts or Leases with the City for three (3) years.

(6) The right to bring a civil action against the Contractor to pursue the remedies provided by this Chapter and other applicable law. The prevailing party shall be entitled to all costs and expenses, including reasonable attorney's fees.

(g) Each Contractor shall be responsible for its Subcontractors with respect to compliance with this Chapter. If a Subcontractor fails to

comply, the City may pursue the remedies set forth in this Section against the Contractor based on the Subcontractor's failure to comply, provided that the Contracting Department has first provided the Contractor with notice and an opportunity to obtain a cure of the violation.

(h) Each Tenant shall be responsible for each Subtenant, Contractor and Subcontractor performing services on property covered by the Tenant's Lease, with respect to compliance with this Chapter. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against the Tenant based on the Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Contracting Department has first provided the Tenant with notice and an opportunity to obtain a cure of the violation.

(i) Each of the rights set forth in this Section 12Q.5 shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this Section shall be used first to cover the costs of enforcing this Chapter and thereafter appropriated for the use of the Department of Public Health.

(j) The Agency may compromise and settle unlitigated claims against Contracting Parties for violations of contractual provisions required by this Chapter.

(k) All Contracting Parties and Contracting Departments shall cooperate fully with the Agency in connection with any investigation of an alleged violation of this Chapter or with any inspection conducted by the Agency.

(l) When this Chapter authorizes the Agency to charge interest (not to exceed 10%), in determining whether to charge the interest, the Agency shall give due consideration to the size of the Contractor's business, the Contractor's good faith, the gravity of the violation, and the history of previous violations. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.5.1. ADDITIONAL CONTRACT REQUIREMENTS; LIQUIDATED DAMAGES.

Every Contract, Contract Amendment, Lease and Lease Amendment entered after January 1, 2006 shall contain provisions in which the Contracting Party agrees:

(1) To be liable to the City for liquidated damages as provided in this Section;

(2) To be subject to the procedures governing enforcement of a breach of the terms of a Contract, Contract Amendment, Lease or Lease Amendment which terms are required by this Chapter, as set forth in Section 12Q.5.2;

(3) That the commitment of Contracting Parties to comply with the requirements of this Chapter is a material element of the City's consideration for the agreement and that the failure of a Contracting Party to comply will cause significant and substantial harm to the City and the public, which is extremely difficult to determine or quantify, and that the liquidated damages set forth in this Section are reasonable amounts to pay for the harm caused by the Contracting Party's non-compliance;

(4) That for failure to comply with the requirements of this Chapter, the Agency may require the Contracting Party to pay the City liquidated damages of up to one hundred dollars (\$100) for each one-week pay period for each employee for whom the Contracting Party has either not offered health plan benefits or made payments as required by Section 12Q.3. The Agency shall adjust this amount proportionately for Contracting Parties that use a pay period other than one week;

(5) That for any failure to provide reports to the City or access to pertinent records, or any failure to cooperate with any audit, inspection or investigation conducted by the Agency, the Agency may require the Contracting Party to pay the City liquidated damages of up to one thousand dollars (\$1000); and

(6) That while liquidated damages in the maximum amounts set forth in this Section are a reasonable estimate of the harm caused by the Contracting Party's non-compliance with contrac-

tual provisions required by this Chapter, the Agency may determine that less than the full amount is warranted depending on the circumstances of each case. The Agency shall give due consideration to the following factors in determining the amount of liquidated damages: the size of the Contracting Party's business, the Contracting Party's good faith, the gravity of the violation, the history of previous violations, the failure to comply with record-keeping, reporting and anti-retaliation requirements, and the extent to which the imposition of liquidated damages would undermine the purpose of this Chapter by imposing unreasonable financial burdens on the Contracting Party, thereby restricting its ability to fulfill its obligations under this Chapter. (Added by Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.5.2. INVESTIGATION AND DETERMINATION OF VIOLATIONS.

(a) **Determination of Violation.** Upon determining that a Contracting Party may have violated the terms of a Contract, Contract Amendment, Lease or Lease Amendment required under this Chapter, the Agency shall send written notice to the Contracting Party of the possible violation and of the Contracting Party's right to respond to the Agency's initial determination by submitting pertinent documents and other information. The written notice shall also notify the Contracting Party that the Agency is authorized to direct the Controller to withhold payment otherwise due to the Contracting Party pursuant to the provisions of Subsection (d). If after providing the Contracting Party with a reasonable opportunity to respond to the allegations the Agency makes a final determination that a violation has occurred, the Agency shall provide a written notice of violation to the Contracting Party.

(b) **Right to Appeal.** The Contracting Party may appeal the Agency's final determination. The Contracting Party must file an appeal with the Agency in writing, specifying the basis for contesting the determination, no later than 15 days after the date of the notice of determination. Failure to file an appeal in writing with the

Controller within 15 days shall cause the Agency's determination to be deemed a final administrative decision by the City.

(c) **Administrative Hearing.**

(1) Within 15 days after the Agency receives an appeal, the Controller shall appoint a hearing officer and shall notify the Agency and the Contracting Party.

(2) The hearing officer shall promptly set a date for a hearing. The hearing shall commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification unless all parties agree to an extended period.

(3) The Agency shall have the burden of producing evidence that the Contracting Party has violated the requirements of this Chapter and the burden of proving the violation.

(d) **Hearing Officer's Decision.**

(1) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or vacating the Agency's determination. If the hearing officer vacates the Agency's determination in its entirety, that decision shall also vacate any assessment of liquidated damages. If the hearing officer affirms the Agency's determination, the hearing officer shall issue a decision upholding the Agency's determination, including the amount of the liquidated damages assessed by the Agency. With respect to liquidated damages, the hearing officer's jurisdiction to modify the Agency's assessment is limited and the following procedures apply. If the hearing officer modifies the Agency's determination, the hearing officer shall transmit the decision to the Agency, which shall within five business days modify the assessment of liquidated damages consistent with the hearing officer's decision based on the criteria set forth in Section 12.Q.5.1(6) and transmit the modified assessment to the hearing officer. Upon receiving the modified assessment from the Agency, the hearing officer shall within three business days issue a final decision, which shall include the amount of the liquidated damages assessment as modified by the Agency.

(2) The hearing officer's decision shall consist of findings and a determination, which shall be final. The Contracting Party may seek review of the hearing officer's decision only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure, section 1094.5, as may be amended from time to time.

(3) The failure of the Controller or hearing officer to comply with the time requirements of this Section shall not cause the Controller or the hearing officer to lose jurisdiction over an appeal from the Agency's determination filed under this Section.

(4) Upon the hearing officer's decision affirming or modifying the Agency's determination, the Contracting Party shall take the corrective action, including the payment of liquidated damages, if any, within 14 days of receiving the hearing officer's decision. When a Contracting Party fails to take corrective action within the time required by the provisions of this Section, the City may immediately pursue all available remedies against the Contracting Party.

(e) **Withholding of Payments by Controller.**

(1) When the Agency sends notice to a Contracting Party of its final determination that the Contracting Party has violated the requirements of this Chapter and of the Contracting Party's right of appeal to the Controller, the Agency may direct the Contracting Department and the Controller to deduct from the payments otherwise due to the Contracting Party the amounts that the Agency has determined the Contracting Party must pay to the City under Section 12Q.3(a)(2) and as liquidated damages. The Controller, in issuing any warrant for any such payment, shall deduct the amounts specified by the Agency.

(2) The Controller shall withhold these funds until (A) the hearing officer issues a decision finding that the Contracting Party does not owe all or a portion of the amount withheld, in which case the Controller shall release funds to the Contracting Party consistent with the hearing officer's decision or (B) the Contracting Party consents to the use of the funds to pay the City

the amounts that the Agency or hearing officer found due. As to any funds being withheld for which neither (A) nor (B) applies, the Controller shall retain the funds until the hearing officer's decision is no longer subject to judicial review, at which time the Controller shall distribute amounts owed under Section 12Q.3(a)(2) in the appropriate account for the use of the Department of Public Health and amounts due as liquidated damages in the General Fund, provided that this action is consistent with any final determination of a court of competent jurisdiction. Notwithstanding the provisions of this subsection, the Agency may authorize the release of payments withheld from the Contracting Party under this Section if the Agency determines that the continued withholding of funds imposes a substantial risk of endangering public health or safety, interfering with a service or project that is essential to the City, or having an unreasonable adverse financial impact on the City. (Added by Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.6. WAIVERS BY THE AGENCY DIRECTOR.

(a) The Agency Director or designee, in consultation with the Department of Public Health, shall waive the requirements of this Chapter when the Contracting Department has provided justification to the Agency Director, and the Agency Director has found that one of the following circumstances exists:

(1) The needed service, project or property arrangement under the Contract or Lease is available only from a sole source;

(2) Pursuant to Chapter 6 or 21 of the Administrative Code, the Contract or Lease is necessary to respond to an emergency that endangers the public health or safety;

(3) There are no qualified responsive bidders or prospective vendors or tenants that comply with the requirements of this Chapter and the agreement is for a service, lease or project that is essential to the City or the public;

(4) The public interest warrants the granting of a waiver because application of this Chapter would constitute an adverse impact on services or an unreasonable adverse financial impact on the City; or

(5) (A) The services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity;

(B) Purchase under such arrangement will substantially reduce the City's cost of purchasing such services; and

(C) Purchase under such an arrangement is in the best interest of the City or the public.

(b) Each waiver shall be effective for the duration of the Contract or Lease. Subsequent waivers may be requested and either granted or denied. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.7. SPECIAL WAIVER BY THE PUBLIC UTILITIES COMMISSION.

The General Manager of the Public Utilities Commission may waive the requirements of this Chapter where the Contractor or Subcontractor is providing to or on behalf of the San Francisco Public Utilities Commission services relating to:

(a) The provision, conveyance or transmission of wholesale or bulk water, electricity or natural gas; or

(b) Ancillary requirements such as spinning reserve, voltage control, or loading scheduling, as required for ensuring reliable services in accordance with good utility practice; provided, however:

(1) The purchase of such services may not practically be accomplished through the City's standard competitive bidding procedures; and

(2) The Contractor or Subcontractor is not providing direct, retail services to end users within the geographic boundaries of the City. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001)

SEC. 12Q.8. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such

agreement in clear and unambiguous terms. (Added by Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.9. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any Federal or State law. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Renumbered by Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.10. EFFECTIVE DATE.

This Chapter shall become effective, and its requirements shall be included in all covered Contracts, Subcontracts, Leases and Subleases, 30 days after it is adopted or July 1, 2001, whichever occurs later. This Chapter is intended to have prospective effect only. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Renumbered by Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.11. PERIOD OF SUSPENSION.

Contracting Parties shall not be required to provide any of the Health Care Accountability Components provided in Section 12Q.3 to their Covered Employees until such time as the Health Director has prepared, and the Health Commission has approved, minimum standards for health plan benefits pursuant to Section 12Q.3(a)(1). The Health Director and Health Commission shall proceed promptly to take these actions. From the date upon which the Health Commission approves such minimum standards forward, Contracting Parties shall provide the Health Care Accountability Components set forth in Section 12Q.3 to their Covered Employees. (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Renumbered by Ord. 49-06, File No. 051908, App. 3/24/2006)

SEC. 12Q.12. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person, location or circumstance, is enjoined or held invalid by a court of law, the remainder of this Chapter, including the application of such part or provi-

sions to other persons, locations or circumstances, shall not be affected by such action and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. Further, to the extent Section 12Q.3(a)(2) may be enjoined or held invalid by a court of law, the Contracting Party may alternatively comply in accordance with Section 12Q.3(c)(2). (Added by Ord. 116-01, File No. 010848, App. 5/31/2001; Renumbered by Ord. 49-06, File No. 051908, App. 3/24/2006)

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CHAPTER 12R: MINIMUM WAGE

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- Sec. 12R.3. Definitions.
- Sec. 12R.4. Minimum Wage.
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- Sec. 12R.24. Other Remedies Not Affected.
- Sec. 12R.25. Outreach.
- Sec. 12R.26. Reports.

SEC. 12R.1. TITLE.

This Chapter shall be known as the "Minimum Wage Ordinance." (Added by Proposition L, 11/4/2003)

SEC. 12R.2. AUTHORITY.

This Chapter is adopted pursuant to the powers vested in the City and County of San Francisco ("the City") under the laws and Constitution of the State of California and the City Charter including, but not limited to, the police powers vested in the City pursuant to Article XI, Section 7 of the California Constitution and Section 1205(b) of the California Labor Law. (Added by Proposition L, 11/4/2003)

SEC. 12R.3. DEFINITIONS.

As used in this Chapter, the following capitalized terms shall have the following meanings:

"Agency" shall mean the Living Wage/Living Health Division of the Office of Contract Administration or such other City department or agency as the City shall by resolution designate.

"City" shall mean the City and County of San Francisco.

"Employee" shall mean any person who:

(a) In a particular week performs at least two (2) hours of work for an Employer within the geographic boundaries of the City; and

(b) Qualifies as an employee entitled to payment of a minimum wage from any employer under the California minimum wage law, as provided under Section 1197 of the California Labor Code and wage orders published by the California Industrial Welfare Commission, or is a participant in a Welfare-to-Work Program.

"Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly or through an agent any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours or working conditions of any Employee.

"Minimum Wage" shall have the meaning set forth in Section [12R.]4 of this Chapter.

"Small Business" shall mean an Employer for which fewer than ten (10) persons perform work for compensation during a given week. In determining the number of persons performing work for an Employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity.

"Nonprofit Corporation" shall mean a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

"Welfare-to-Work Program" shall mean the City's CalWORKS Program, County Adult Assistance Program (CAAP) which includes the Personal Assisted Employment Services (PAES) Program, and General Assistance Program, and any successor programs that are substantially similar to them. (Added by Proposition L, 11/4/2003)

SEC. 12R.4. MINIMUM WAGE.

(a) Employers shall pay Employees no less than the Minimum Wage for each hour worked within the geographic boundaries of the City.

(b) Beginning on the effective date of this Chapter, the Minimum Wage shall be an hourly rate of \$8.50. To prevent inflation from eroding its value, beginning on January 1, 2005, and each year thereafter, the Minimum Wage shall increase by an amount corresponding to the prior year's increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area.

(c) The Minimum Wage for Employers that are Small Businesses or Nonprofit Corporations shall phase in over a two year period in order to afford such Employers time to adjust. For such

Employers, the effective date of this Chapter shall be January 1, 2005. For a transition period beginning January 1, 2005 and ending December 31, 2005, the Minimum Wage for Employees of such Employers shall be an hourly rate of \$7.75. Beginning January 1, 2006, the Minimum Wage for Employees of such Employers shall be the regular Minimum Wage established pursuant to Section 4(b) of this Chapter. (Added by Proposition L, 11/4/2003)

SEC. 12R.5. NOTICE, POSTING AND PAYROLL RECORDS.

(a) By December 1 of each year, the Agency shall publish and make available to Employers a bulletin announcing the adjusted Minimum Wage rate for the upcoming year, which shall take effect on January 1. In conjunction with this bulletin, the Agency shall by December 1 of each year publish and make available to Employers, in all languages spoken by more than five percent of the San Francisco work force, a notice suitable for posting by Employers in the workplace informing Employees of the current Minimum Wage rate and of their rights under this Chapter.

(b) Every Employer shall post in a conspicuous place at any workplace or job site where any Employee works the notice published each year by the Agency informing Employees of the current Minimum Wage rate and of their rights under this Chapter. Every Employer shall post such notices in English, Spanish, Chinese and any other language spoken by at least five percent of the Employees at the workplace or job site. Every Employer shall also provide each Employee at the time of hire the Employer's name, address and telephone number in writing.

(c) Employers shall retain payroll records pertaining to Employees for a period of four years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. Where an Employer does not maintain or retain adequate records documenting wages paid or does not allow the Agency reasonable access to such records, it shall be presumed that the Employer paid no

more than the applicable federal or state minimum wage, absent clear and convincing evidence otherwise. (Added by Proposition L, 11/4/2003)

SEC. 12R.6. RETALIATION PROHIBITED.

It shall be unlawful for an Employer or any other party to discriminate in any manner or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Rights protected under this Chapter include, but are not limited to: the right to file a complaint or inform any person about any party's alleged noncompliance with this Chapter; and the right to inform any person of his or her potential rights under this Chapter and to assist him or her in asserting such rights. Protections of this Chapter shall apply to any person who mistakenly, but in good faith, alleges noncompliance with this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights. (Added by Proposition L, 11/4/2003)

SEC. 12R.7. IMPLEMENTATION AND ENFORCEMENT.

(a) **Implementation.** The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by Employers, Employees and other parties to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform Employees of their rights under this Chapter, for monitoring Employer compliance with this Chapter, and for providing administrative hearings to determine whether an Employer or other person has violated the requirements of this Chapter.

(b) **Administrative Enforcement.** The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an Employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing. Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, the payment of any back wages unlawfully withheld, and the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued. A violation for unlawfully withholding wages shall be deemed to continue from the date immediately following the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date immediately preceding the date the wages are paid in full. Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 7(c) of this Chapter and/or, except where prohibited by state or federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Employer or person to pay to the City a sum of not more than \$50 for each day or portion thereof and for each Employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and shall be used to offset the costs of implementing and enforcing this Chapter. The amounts of all sums and payments authorized or required under this Chapter shall be updated annually for inflation,

beginning January 1, 2005, using the inflation rate and procedures set forth in Section 4(b) of this Chapter. An Employee or other person may report to the Agency in writing any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(c) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, the payment of any back wages unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued, reinstatement in employment and/or injunctive relief, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

(d) **Interest.** In any administrative or civil action brought for the nonpayment of wages under this Section, the Agency or court, as the case may be, shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code, which shall accrue from the date that the wages were due and payable as provided in

Part 1 (commencing with Section 200) of Division 2 of the California Labor Code, to the date the wages are paid in full. (Added by Proposition L, 11/4/2003; Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.8. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter shall not apply to Employees covered by a bona fide collective bargaining agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. (Added by Proposition L, 11/4/2003)

SEC. 12R.9. RELATIONSHIP TO OTHER REQUIREMENTS.

This Chapter provides for payment of a minimum wage and shall not be construed to preempt or otherwise limit or affect the applicability of any other law, regulation, requirement, policy or standard that provides for payment of higher or supplemental wages or benefits, or that extends other protections including, but not limited to, the San Francisco Minimum Compensation Ordinance. (Added by Proposition L, 11/4/2003)

SEC. 12R.10. APPLICATION OF MINIMUM WAGE TO WELFARE-TO-WORK PROGRAMS.

The Minimum Wage established pursuant to Section 4(b) of this Chapter shall apply to the City's Welfare-to-Work Programs under which persons must perform work in exchange for receipt of benefits. Participants in Welfare-to-Work Programs shall not, during a given benefits period, be required to work more than a number of hours equal to the value of all cash benefits received during that period, divided by the Minimum Wage. Where state or federal law would preclude the City from reducing the number of work hours required under a given Welfare-to-Work Program, the City may comply with this Section by increasing the cash benefits awarded so that their value is no less than the product of

the Minimum Wage multiplied by the number of work hours required. (Added by Proposition L, 11/4/2003)

SEC. 12R.11. EFFECTIVE DATE.

This Chapter shall become effective ninety (90) days after it is adopted. This Chapter is intended to have prospective effect only. (Added by Proposition L, 11/4/2003)

SEC. 12R.12. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Proposition L, 11/4/2003)

SEC. 12R.13. AMENDMENT BY THE BOARD OF SUPERVISORS.

This Chapter may be amended by the Board of Supervisors as regards the implementation or enforcement thereof, but not as regards the substantive requirements of the Chapter or its scope of coverage. (Added by Proposition L, 11/4/2003)

SEC. 12R.14. CIVIL ACTIONS.

In addition to the actions provided for in Section 12R.7(c), the City Attorney may bring a civil action to enjoin any violation of this Chapter. The City shall be entitled to its attorney's fees and costs in any action brought pursuant to this Section where the City is the prevailing party. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.15. REMEDIES CUMULATIVE.

The remedies, penalties and procedures provided under this Chapter are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.16. ADMINISTRATIVE PENALTIES AND CITATIONS.

(a) Administrative Penalties; Citations.

An administrative penalty may be assessed for a violation of the provisions of this Chapter as specified below. The penalty may be assessed by means of an administrative citation issued by the Director of the Office of Labor Standards Enforcement.

(b) Administrative Penalty Amounts. In addition to all other civil penalties provided for by law, the following violations shall be subject to administrative penalties in the amounts set forth below:

VIOLATION	PENALTY AMOUNT
Failure to maintain payroll records or to retain payroll records for four years — Administrative Code Section 12R.5(c)	\$500.00
Failure to allow the Office of Labor Standards Enforcement to inspect payroll records — Administrative Code Section 12R.5(c)	\$500.00
Retaliation for exercising rights under Minimum Wage Ordinance — Administrative Code [Section] 12R.6	\$500.00

The penalty amounts shall be increased cumulatively by fifty percent (50%) for each subsequent violation of the same provision by the same employer or person within a three (3) year period. The maximum penalty amount that may be imposed by administrative citation in a calendar year for each type of violation listed above shall be \$5,000. In addition to the penalty amounts listed above, the Office of Labor Standards Enforcement may assess enforcement costs to cover the reasonable costs incurred in enforcing the administrative penalty, including reasonable attorneys' fees. Enforcement costs shall not count toward the \$5,000 annual maximum. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.17. VIOLATIONS.

(a) Separate and Continuing Violations; Penalties Paid Do Not Cure Violations. Each and every day that a violation exists constitutes

a separate and distinct offense. Each section violated constitutes a separate violation for any day at issue. If the person or persons responsible for a violation fail to correct the violation within the time period specified on the citation and required under Section 12R.18, the Director of the Office of Labor Standards Enforcement may issue subsequent administrative citations for the uncorrected violation(s) without issuing a new notice as otherwise required by Section 12R.18(a). Payment of the penalty shall not excuse the failure to correct the violation nor shall it bar any further enforcement action by the City. If penalties and costs are the subject of administrative appeal or judicial review, then the accrual of such penalties and costs shall be stayed until the determination of such appeal or review is final.

(b) **Payments to City; Due Date; Late Payment Penalty.** All penalties assessed under Section 12R.16 shall be payable to the City and County of San Francisco. Administrative penalties and costs assessed by means of an administrative citation shall be due within thirty (30) days from the date of the citation. The failure of any person to pay an administrative penalty and costs within that time shall result in the assessment of an additional late fee. The amount of the late fee shall be ten (10) percent of the total amount of the administrative penalty assessed for each month the penalty and any already accrued late payment penalty remains unpaid.

(c) **Collection of Penalties; Special Assessments.** The failure of any person to pay a penalty assessed by administrative citation under Section 12R.16 within the time specified on the citation constitutes a debt to the City. The City may file a civil action, create and impose liens as set forth below, or pursue any other legal remedy to collect such money.

(d) **Liens.** The City may create and impose liens against any property owned or operated by a person who fails to pay a penalty assessed by administrative citation. The procedures provided for in Chapter XX of Chapter 10 of the San

Francisco Administrative Code shall govern the imposition and collection of such liens. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.18. ADMINISTRATIVE CITATION; NOTICE OF VIOLATION.

(a) **Notice and Opportunity to Cure.** The Director of the Office of Labor Standards Enforcement ("Director") or his or her designee shall notify any person in violation of the Code provisions identified in Section 12R.16(b) of such violation prior to the issuance of an administrative citation. Regardless of the manner of service of the notice under Section 12R.19, the Director or his or her designee may post the notice of violation by affixing the notice to a surface in a conspicuous place on property that is (1) the person's principal place of business in the City, or (2) if the person's principal place of business is outside the City, the fixed location within the City from or at which the person conducts business in the City, or (3) if the person does not regularly conduct business from a fixed location in the City, one of the following: (i) the location where the person maintains payroll records if the notice of violation is for violation of Section 12R.5(c), or (ii) the jobsite or other primary location where the person's employees perform services in the City at the time the notice is posted. The notice of violation shall specify the action required to correct or otherwise remedy the violation(s). The person or persons responsible for the violation shall be allowed not less than ten (10) days from the date of the notice of violation to establish that no violation occurred or such person or persons are not responsible for the violation, or correct or otherwise remedy the violation; provided, however, that the Director may, in his or her discretion, assign a longer period, not to exceed twenty-one (21) days, within which to correct or otherwise remedy each violation, or establish that no violation occurred or such person or persons are not responsible for the violation. The Director may consider the cost of correction and the time needed to obtain information, documents, data and records for correction in assigning a specific period of time within which to correct or otherwise remedy

each violation, or obtain and submit evidence that no violation occurred or such person or persons are not responsible for the violation.

(b) **Issuance of Citation.** If the person or persons responsible for the violation fail to comply with any portion of a notice of violation within the time provided, the Director may issue an administrative citation to the violator. The administrative citation shall be issued on a form prescribed by the Office of Labor Standards Enforcement. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.19. ADMINISTRATIVE CITATION AND NOTICE OF VIOLATION; SERVICE.

Service of a notice of violation and an administrative citation under Section 12R.16 may be accomplished as follows:

(a) The Director or his or her designee may obtain the signature of the person responsible for the violation to establish personal service of the citation; or

(b) (1) The Director or his or her designee shall post the citation by affixing the citation to a surface in a conspicuous place on the property described in Section 12R.18. Conspicuous posting of the citation is not required when personal service is accomplished or when conspicuous posting poses a hardship, risk to personal health or safety or is excessively expensive; and

(2) The Director or his or her designee shall serve the citation by first class mail as follows:

(i) The administrative citation shall be mailed to the person responsible for the violation by first class mail, postage prepaid, with a declaration of service under penalty of perjury; and

(ii) A declaration of service shall be made by the person mailing the administrative citation showing the date and manner of service by mail and reciting the name and address of the person to whom the citation is issued; and

(iii) Service of the administrative citation by mail in the manner described above shall be effective on the date of mailing. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.20. ADMINISTRATIVE CITATION; CONTENTS.

The administrative citation under Section 12R.16 shall include all the following:

- (1) A description of the violation;
- (2) The date and location of the violation(s) observed;
- (3) A citation to the provisions of law violated;
- (4) A description of corrective action required;
- (5) A statement explaining that each day of a continuing violation may constitute a new and separate violation;
- (6) The amount of administrative penalty imposed for the violation(s);
- (7) A statement informing the violator that the fine shall be paid to the City and County of San Francisco within thirty (30) days from the date on the administrative citation, the procedure for payment, and the consequences of failure to pay;

(8) A description of the process for appealing the citation, including the deadline for filing such an appeal; and

(9) The name and signature of the Director. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.21. ADMINISTRATIVE APPEAL.

(a) **Period of Limitation for Appeal.** Persons receiving an administrative citation may appeal it within fifteen (15) days from the date the citation is served. The appeal must be in writing and must indicate a return address. It must be accompanied by the penalty amount, specifying the basis for the appeal in detail, and must be filed with both the Office of Labor Standards Enforcement and the Controller's Office as indicated in the administrative citation.

(b) **Hearing Date.** As soon as practicable after receiving the written notice of appeal and the penalty amount, the Controller or his or her designee shall promptly select a hearing officer (who shall not be an employed in the Office of

Labor Standards Enforcement) to hear and decide the administrative appeal. The hearing officer shall fix a date, time and place for the hearing on the appeal. Written notice of the time and place for the hearing may be served by first class mail, at the return address indicated on the written appeal. Service of the notice must be made at least ten (10) days prior to the date of the hearing to the person appealing the citation. The hearing shall be held no later than thirty (30) days after service of the notice of hearing, unless that time is extended by mutual agreement of the parties.

(c) **Notice.** Except as otherwise provided by law, the failure of any person with an interest in property affected by the administrative citation, or other person responsible for a violation, to receive a properly addressed notice of the hearing shall not affect the validity of any proceedings under this Chapter. Service by first class mail, postage prepaid, shall be effective on the date of mailing.

(d) **Failure to Appeal.** Failure of any person to file an appeal in accordance with the provisions of this Section or to appear at the hearing shall constitute a failure to exhaust administrative remedies and a forfeiture of the penalty amount previously remitted.

(e) **Submittals for the Hearing.** No later than five (5) days prior to the hearing, the person to whom the citation was issued and the Office of Labor Standards Enforcement shall submit to the hearing officer, with simultaneous service on the opposing party, written information including, but not limited to, the following: the statement of issues to be determined by the hearing officer and a statement of the evidence to be offered and the witnesses to be presented at the hearing.

(f) **Conduct of Hearing.** The hearing officer appointed by the Controller or the Controller's designee shall conduct all appeal hearings under this Chapter. The Office of Labor Standards Enforcement shall have the burden of proof in such hearings. The hearing officer may accept

evidence on which persons would commonly rely in the conduct of their serious business affairs, including but not limited to the following:

(1) A valid citation shall be prima facie evidence of the violation;

(2) The hearing officer may accept testimony by declaration under penalty of perjury relating to the violation and the appropriate means of correcting the violation;

(3) The person responsible for the violation, or any other interested person, may present testimony or evidence concerning the violation and the means and time frame for correction.

The hearing shall be open to the public and shall be tape-recorded. Any party to the hearing may, at his or her own expense, cause the hearing to be recorded and transcribed by a certified court reporter. The hearing officer may continue the hearing and request additional information from the Office of Labor Standards Enforcement or the appellant prior to issuing a written decision.

(g) **Hearing Officer's Decision; Findings.** The hearing officer shall make findings based on the record of the hearing and issue a decision based on such findings within fifteen (15) days of conclusion of the hearing. The hearing officer's decision may uphold the issuance of a citation and penalties stated therein, may dismiss a citation, or may uphold the issuance of the citation but reduce, waive or conditionally reduce or waive the penalties stated in a citation or any late fees assessed if mitigating circumstances are shown and the hearing officer finds specific grounds for reduction or waiver in the evidence presented at the hearing. The hearing officer may impose conditions and deadlines for the correction of violations or the payment of outstanding civil penalties. Copies of the findings and decision shall be served upon the appellant and the Office of Labor Standards Enforcement by certified mail.

(h) **Hearing Officer's Decision.** The decision of the hearing officer is final. If the hearing officer concludes that the violation charged in the citation did not occur or that the person charged in the citation was not the responsible

party, the Office of Labor Standards Enforcement shall refund or cause to be refunded the penalty amount to the person who deposited such amount. The hearing officer's decision shall be served on the appellant by certified mail. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.22. REGULATIONS.

The Office of Labor Standards Enforcement may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the administrative penalty and citation system pursuant to Sections 12R.16 through 12R.20, inclusive. The Controller may promulgate and enforce rules and regulations, and issue determinations and interpretations relating to the conduct of administrative appeals under Section 12R.21. Any rules and regulations promulgated by the Office of Labor Standards Enforcement or Controller shall be approved as to legal form by the City Attorney, and shall be subject to not less than one noticed public hearing. The rules and regulations shall become effective 30 days after receipt by the Clerk of the Board of Supervisors, unless the Board of Supervisors by resolution disapproves or modifies the regulations. The Board of Supervisors' determination to modify or disapprove a rule or regulation submitted by the Office of Labor Standards Enforcement or Controller shall not impair the ability of the Office of Labor Standards Enforcement or Controller to resubmit the same or similar rule or regulation directly to the Board of Supervisors if the Office of Labor Standards Enforcement or Controller determines it is necessary to effectuate the purposes of this Chapter. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.23. JUDICIAL REVIEW.

(a) **Procedures.** After receipt of the decision of the hearing officer under Section 12R.21, the appellant may file an appeal with the superior court pursuant to California Government Code Section 53069.4. The appeal shall be submitted within twenty (20) days of the date of mailing of the hearing officer's decision, with the

applicable filing fee. The appeal shall state the reasons the appellant objects to the findings or decision.

(b) **Review.** The superior court shall conduct a de novo hearing, except that the contents of the Office of Labor Standards Enforcement's file (excluding attorney client communications and other privileged or confidential documents and materials that are not discoverable or may be excluded from evidence in judicial proceedings under the Evidence Code, Civil Code, Code of Civil Procedure or other applicable law) shall be received into evidence. A copy of the notice of violation and imposition of penalty shall be entered as prima facie evidence of the facts stated therein.

(c) **Filing Fee.** The superior court filing fee shall be twenty-five (\$25.00). If the court finds in favor of the appellant, the amount of the fee shall be reimbursed to the appellant by the City and County of San Francisco. Any deposit of penalty shall be refunded by the City and County of San Francisco in accordance with the judgment of the court. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.24. OTHER REMEDIES NOT AFFECTED.

The administrative citation procedures established in this Chapter shall be in addition to any other criminal, civil, or other remedy established by law which may be pursued to address violations of this Chapter. An administrative citation issued pursuant to this Chapter shall not prejudice or adversely affect any other action, civil or criminal, that may be brought to abate a violation or to seek compensation for damages suffered. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.25. OUTREACH.

The Office of Labor Standards Enforcement shall establish a community-based outreach program to conduct education and outreach to employees. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

SEC. 12R.26. REPORTS.

The Office of Labor Standards Enforcement shall provide annual reports to the Board of Supervisors on the implementation of the Minimum Wage Ordinance. (Added by Ord. 205-06, File No. 060247, App. 7/25/2006)

CHAPTER 12S: WORKING FAMILIES CREDIT PROGRAM

- Sec. 12S.1. Working Families Credit Program.
- Sec. 12S.2. City Offices to Provide Forms and Information.

SEC. 12S.1. WORKING FAMILIES CREDIT PROGRAM.

The Working Families Credit Program shall be administered by the San Francisco Human Services Agency (HSA). Beginning in Fiscal Year 2005-2006, the program will provide an incentive payment to working families who qualify for the Working Families Credit from the Treasurer's Working Families Credit Fund established in Section 10.100-347. The incentive payment may be based on a percentage of the family's federal Earned Income Tax Credit (EITC) or a flat rate established by the City. HSA shall work with the Treasurer, the Controller, other City departments, and community stakeholders to develop the program. HSA also may enter into agreements with private industries to provide participants in the Working Families Credit Program with services or products that are offered at below-market rates and that are beneficial to the participants and their families. The Treasurer may develop and implement programs that encourage responsible savings and investment practices. This legislation is not intended to result in a reduction in the level of public assistance to which participants in the Working Families Credit Program would otherwise be entitled. (Added by Ord. 194-04, File No. 040737, App. 7/30/2004) (Former Sec. 12S.1 added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003; Ord. No. 308-06, File No. 061562, App. 12/18/2006)

SEC. 12S.2. CITY OFFICES TO PROVIDE FORMS AND INFORMATION.

Each department head shall take all appropriate steps to ensure that the informational signs, brochures and application forms for the

San Francisco Working Families Credit Program, to be provided by the Treasurer, are displayed at any counter or other reception area accessible to members of the public in any City-occupied building under his or her jurisdiction where residents receive City services. Upon passage of this legislation, departments shall obtain the materials from the Treasurer and shall display the materials through April 15, 2005. Every year thereafter while the Working Families Credit Program is in effect, Departments shall obtain materials from the Treasurer by January 15 and display the materials from that date through April 15. (Added by Ord. 42-05, File No. 050134, App. 3/3/2005) (Former Sec. 12S.2 added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

Sec. 12S.3.

(Added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

Sec. 12S.4.

(Added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

Sec. 12S.5.

(Added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

Sec. 12S.6.

(Added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

Sec. 12S.7.

(Added by Ord. 214-01, File No. 011167, App. 11/2/2001; repealed by Ord. 171-03, File No. 030422, App. 7/3/2003)

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CHAPTER 12T: [RESERVED]

Sec. 12T.1.

(Added by Ord. 3-02, File No. 011796, App. 1/18/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12T.2.

(Added by Ord. 3-02, File No. 011796, App. 1/18/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12T.3.

(Added by Ord. 3-02, File No. 011796, App. 1/18/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12T.4.

(Added by Ord. 3-02, File No. 011796, App. 1/18/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12T.5.

(Added by Ord. 3-02, File No. 011796, App. 1/18/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 12T.6.

(Added by Ord. 3-02, File No. 011796, App. 1/18/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

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CHAPTER 12U: SWEATFREE CONTRACTING

- Sec. 12U.1. Findings.
- Sec. 12U.2. Definitions.
- Sec. 12U.3. Prohibition on Sweatshop Conditions.
- Sec. 12U.4. Contractual Requirement.
- Sec. 12U.5. Phase-In Period.
- Sec. 12U.6. Advisory Group.
- Sec. 12U.7. Administration and Enforcement.
- Sec. 12U.8. Effective Date.
- Sec. 12U.9. Exceptions.
- Sec. 12U.9.5. Award of Contract Absent a Sweatfree-Compliant Bid or Proposal.
- Sec. 12U.10. Preemption.
- Sec. 12U.11. Severability.

SEC. 12U.1. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) This Chapter shall be known as the Sweatfree Contracting Ordinance.

(b) Each year the City and County of San Francisco spends hundreds of millions of dollars contracting with private sector contractors for the purchase or rental of goods. The prudent expenditure of public dollars requires that the City select responsible contractors.

(c) The City and County, as a major purchaser of goods, must be cognizant of the labor conditions that may be supported by its actions as a major market participant. Better working conditions assure consistently better quality goods for the City and County, by assuring fewer disruptions in the workplace due to workers' grievances, fewer absences due to illnesses, less fatigue and fewer workplace injuries, less turnover of workers, and greater incentive to perform.

(d) In its role as a market participant, the City and County seeks to assure that the integrity of the procurement process is not under-

mined by contractors or subcontractors who engage in sweatshop practices. Contractors who use Sweatshop Labor are able to underbid responsible contractors who pay fair wages and maintain humane work environments and conditions. Such practices place responsible contractors at a competitive disadvantage, which may dissuade responsible contractors from participating in the City and County procurement process. This Chapter will encourage responsible contracting with the City and County and reduce any inadvertent support of contractors who use Sweatshop Labor.

(e) By adopting this ordinance, the City and County does not intend to preclude the City and County or its contractors or subcontractors from doing business with any foreign country. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.2. DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply to the terms used herein.

(a) "Abusive Forms of Child Labor" shall mean the following: work performed by a person under the age of 18 when the person does not voluntarily seek the work or the person is threatened by the person's employer with physical, mental or emotional harm for nonperformance; (2) work performed by a person under the age of 18 in violation of any applicable law of the country of manufacture or assembly governing the minimum age of employment, compulsory education, or occupational health and safety; or (3) the use of a person under the age of 18 for illegal activities, including but not limited to the production or trafficking of illicit drugs or for prostitution.

(b) "Contract" shall mean an agreement for Goods for an amount greater than \$25,000 and having a term in excess of three months to be purchased or provided at the expense of the City and County or to be paid out of moneys deposited

in the treasury or out of trust moneys under the control of or collected by the City and County. "Contract" shall also mean any amendment to a contract entered into after the effective date of this Chapter that causes the amount of the contract to exceed \$25,000 or causes the term to exceed three months.

(c) "Contractor" shall mean any person or persons, association, cooperative, firm, partnership, corporation, company, venture, trustee, trustee in bankruptcy, receiver, or combination thereof who enters into a Contract with the City and County.

(d) "Director" shall mean the Director of the Office of Contract Administration.

(e) "Foreign Convict or Forced Labor" shall mean any form of labor used to produce or manufacture goods prohibited from importation into the United States under 19 U.S. C. § 1307, which includes Abusive Forms of Child Labor and Slave Labor.

(f) "Good" shall mean any good, including without limitation, any material, supply, or equipment.

(g) "Slave Labor" shall mean any form of slavery, sale and trafficking of persons, debt bondage, indentured servitude, serfdom, or forced or compulsory labor.

(h) "Subcontract" shall mean any subcontract agreement or arrangement directly with a Contractor for any work under a Contract (first tier subcontract) and shall mean any subcontract agreement or arrangement between subcontractors, at any tier, except for any agreement or arrangement between subcontractors if the amount of the agreement or arrangement is less than the lesser of (1) 10 percent of the amount of the higher tier subcontractor's work; or (2) \$25,000. "Subcontract" also shall mean any subcontract agreement or arrangement that any Contractor or Subcontractor creates by dividing work into smaller increments for award to any subcontracting entity created for the purpose of awarding a subcontract that is not subject to this Chapter on the basis that it fails to meet either of the monetary thresholds for a Subcontract set above in this subsection (h).

(i) "Subcontractor" shall mean any person or persons, association, cooperative, firm, partnership, corporation, trustee, trustee in bankruptcy, receiver, or combination thereof including without limitation any subcontractor, entering into a Subcontract.

(j) "Sweatshop Labor" shall mean work performed by any Worker under terms or conditions that seriously or repeatedly violate laws of the jurisdiction within which the work is performed governing: (i) wages; (ii) employee benefits; (iii) health and safety, including without limitation exposure to hazardous or toxic substances; (iv) labor, including without limitation collective bargaining rights; (v) environmental conditions; (vi) nondiscrimination, harassment, or retaliation, including without limitation all laws prohibiting workplace and employment discrimination; (vii) freedom of association; or (viii) building or fire codes. "Sweatshop Labor" also shall mean any work performed by any person contributing to the provision of Goods to the City and County under a Contract or Subcontract that constitutes Foreign Convict or Forced Labor, or Abusive Forms of Child Labor or Slave Labor.

(k) "Worker" shall mean any employee of a Contractor or Subcontractor who contributes to the provision of Goods to the City and County under a Contract or Subcontract, including but not limited to any manufacturing or assembling of the Goods. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005; Ord. 265-07, File No. 071369, App. 11/14/2007)

SEC. 12U.3. PROHIBITION ON SWEATSHOP CONDITIONS.

Each Contractor and Subcontractor shall comply with each of the following requirements:

(a) Each Contractor and Subcontractor, regarding any Worker, shall comply with all human and labor rights and labor standards imposed by treaty or law on the country in which the Goods are made or assembled, and shall not engage in Sweatshop Labor.

(b) Each Contractor and Subcontractor shall pay at least the following minimum wages to Workers: (1) to Workers working in the United

States a base hourly wage, to be set and adjusted annually by the Director, to produce for 2,080 hours worked, an annual income equal to or greater than the U.S. Department of Health and Human Services most recent poverty guidelines for a family of three plus an additional 20 percent of the wage level paid, including without limitation amounts paid as hourly wages or health benefits or retirement benefits; and (2) for Workers working in countries other than the United States, a wage, to be set and adjusted annually by the Director, that shall be comparable to the wage for domestic manufacturers established above, adjusted to reflect the country's level of economic development by using the World Bank's most recent Gross National Income per capita Purchasing Power Parity Index.

(c) This Chapter specifies a minimum level of compensation to be paid Workers and shall not be construed to preempt or otherwise limit any other applicable law, regulation or requirement that requires a higher level of compensation.

(d) Each Contractor and Subcontractor shall keep or cause to be kept for a period of not less than three years from the date of the expiration or termination of the term of the Contract, basic payroll and time records for each Worker, and copies of any tax records filed with a governmental entity during the term. Such records shall include the following for each Worker: (a) name and job classification; (b) a general description of the work the Worker performed each day and the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits); and (c) the daily and weekly number of hours worked, deductions made; and (d) any actual wages paid.

(e) Each Contractor and Subcontractor shall maintain weekly certified payroll records for submission to the Office of Contract Administration, the Office of Labor Standards Enforcement, or the Director's designee or other authorized officers or agents of the City and County upon demand. The Contractor shall be responsible for submitting the payroll records of its Subcontractors, although Subcontractors shall submit such records directly to the City and County upon request. All certified payroll records shall be

accompanied by a statement signed by the Contractor, or Subcontractor if requested by the City and County to submit the records, stating that the records are complete and correct.

(f) All records required to be maintained by this Chapter shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco.

(g) All Contractors and Subcontractors shall comply with the overtime laws and regulations applicable to their Workers. In the absence of a law setting overtime compensation, overtime hours shall be compensated at the rate of one-and-one-half times the regular hourly compensation rate. All overtime hours worked beyond 48 hours of working time per work week shall be worked voluntarily, except mandatory overtime above that 48-hour mark is permitted if each of the following conditions is satisfied: (1) the law of the country of manufacture permits mandatory overtime, (2) the manufacturing facility is party to a collective bargaining agreement that permits mandatory overtime, and (3) the mandatory overtime hours are worked in conformance with the collective bargaining agreement.

(h) No Contractor or Subcontractor shall subject any Worker to any physical, sexual, or other illegal harassment or abuse, including corporal punishment, illegal discrimination or retaliation for exercising his or her right to free speech and assembly or other rights protected under applicable labor or employment laws.

(i) No Contractor or Subcontractor shall require or compel any Worker to use contraceptives or take pregnancy tests.

(j) Before commencing any work under the Contract, the Contractor shall provide the City and County a list of the names and addresses of each Subcontractor to be utilized in the performance of the Contract, the Contractor's and each Subcontractor's applicable State tax identification number and the address of each manufacturing or other facility or operation of the Contractor and its Subcontractors for the performance of the Contract. The Office of Contract Administration shall post this information on its internet

website before a Contractor or any of its Subcontractors may commence work under the Contract. Contractor shall update the list to show any changes in the Subcontractors or the facilities or operation during the term of the Contract. Before commencing any work under the Contract, the Contractor also shall provide the City and County a written statement showing the amount to be paid each Subcontractor and shall update this information in writing to show changes in the amount to be paid any Subcontractor or amounts to be paid Subcontractors added after submittal of the most recent statement to the City and County. Amounts to be paid to subcontractors may be reported in ranges of \$20,000.00 to \$50,000.00; \$50,001.00 to \$100,000.00; \$100,001.00 to \$250,000.00; \$250,001.00 to \$500,000.00; above \$500,000.00; or such other ranges as the Director, after consultation with the Office of Labor Standards Enforcement and Sweatfree Procurement Advisory Group, deems appropriate to effectively implement this Chapter. Updates in the amount to be paid a Subcontractor or Subcontractors after submittal of the most recent statements to the City and County need only be submitted if the changed amount would fall into a different range.

(k) During each year of the term of a Contract, the Director, the Office of Labor Standards Enforcement, or the Director's designee may request a written assurance from the Contractor and each of its Subcontractors that the Contractor or Subcontractor is in compliance with this Chapter. The request may seek confirmation of compliance with some or all of the requirements of this Chapter, and may require the response to be submitted under penalty of perjury. The Contractor or Subcontractor shall provide the written assurance within the time period specified by the Director, the Office of Labor Standards Enforcement, or the Director's designee, which shall not be less than 14 days from receipt of the request.

(l) Each Contractor and Subcontractor shall be responsible for ensuring the Subcontractor's compliance with this Chapter.

(m) Contractors and Subcontractors shall demonstrate commitment to best practices and continuous improvement in management practices to eliminate Sweatshop Labor, including the right to freedom of association and collective bargaining. No Contractor or Subcontractor shall subject a Worker to harassment, intimidation or retaliation as a result of his or her efforts to freely associate or bargain collectively. This subsection shall not apply to Contractors or Subcontractors subject to the National Labor Relations Act, 29 U.S.C. §§ 151 et seq. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005; Ord. 265-07, File No. 071369, App. 11/14/2007)

SEC. 12U.4. CONTRACTUAL REQUIREMENT.

Each Contract shall include an agreement by the Contractor to comply with the requirements of this Chapter, and shall incorporate this Chapter by reference. Contracts shall provide the following: (1) that in the event the Director determines that any Contractor or Subcontractor has failed to comply with any provision of this Chapter or any regulations implementing this Chapter, the Contractor shall be liable for liquidated damages equal to the greater of \$1,000 or 20% of the amount of the Goods provided in violation of this Chapter, as determined by the Director; and (2) the City and County may deduct any liquidated damages owed by a Contractor from any monies owed the Contractor under the Contract or any other agreement that the Contractor has with the City and County. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.5. PHASE-IN PERIOD.

During the first full fiscal year of the City and County after the effective date of this Chapter, the City and County shall target for enforcement only Contracts for apparel, garments and corresponding accessories, materials, supplies or equipment. Agreements for other Goods shall be targeted for enforcement in accordance with the procedure set forth in Section 12U.6. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.6. ADVISORY GROUP.

(a) The City and County shall establish a Sweatfree Procurement Advisory Group. The Sweatfree Procurement Advisory Group shall evaluate the industries engaged in the manufacture and sale of goods to determine whether contracts for any goods, in addition to apparel and garments, should be targeted for enforcement, and to evaluate the implementation, administration, and enforcement of this Chapter. To determine whether a particular good shall be targeted for enforcement, the factors that the Sweatfree Procurement Advisory Group shall consider shall include, but not be limited to: (a) the amount the City and County has spent, and anticipates spending for such good; (b) evidence of Sweatshop Labor or other conditions prohibited by this Chapter in the manufacturing, assemblage or distribution of such good; and (c) any financial impact that targeting the good for enforcement will have on the City and County. At the end of the first full fiscal year of the City and County following the effective date of this Chapter, and annually thereafter, the Sweatfree Procurement Advisory Group shall submit a written report to the Director and the Office of Labor Standards Enforcement that contains any recommendations on the administration, implementation, and enforcement of this Chapter, or the application of this Chapter to other goods. The report shall include the supporting information upon which each recommendation is based and a report on the financial impact that adoption of the recommendation will have on the City and County. The Director may submit any recommendation to extend the applicability of this Chapter to other goods to the Board of Supervisors. Upon the adoption of an ordinance approving such recommendation, Contracts for the purchase of such goods shall be subject to this Chapter. The Director in the Director's discretion may adopt other recommendations of the Sweatfree Procurement Advisory Group subject to the Municipal Code and the Charter.

(b) The Sweatfree Procurement Advisory Group shall determine how the City and County may maximize its purchase of goods produced in San Francisco. Within four months of its forma-

tion, the Sweatfree Procurement Advisory Group shall examine how the City and County may provide preferences and/or incentives to garment industry manufacturers in San Francisco that are in compliance with this Chapter, and explore the expansion of preferences and/or incentives to other industries. Within the four-month period, the Sweatshop Procurement Advisory Group shall propose legislation to immediately implement the preferences and/or incentives.

(c) The Sweatfree Procurement Advisory Group shall consist of eleven members. The Mayor and the Board of Supervisors shall each appoint five members. The Controller shall appoint one member. Each member shall be appointed to a term of two years. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience representing employees in labor matters. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience acquiring goods or services for a public entity. At least one of the Board of Supervisors' appointees and one of the Mayor's appointees must have significant experience as an advocate for human rights or the poor. The Controller's appointee shall have significant experience in finance, financial auditing, or accounting. All members of the Sweatfree Procurement Advisory Group shall be appointed within sixty days of the effective date of this Chapter. Each member shall serve at the pleasure of the appointing authority. The Sweatfree Procurement Advisory Group shall meet not less than once each fiscal year. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.7. ADMINISTRATION AND ENFORCEMENT.

(a) The Director shall implement and administer, and the Director and the Office of Labor Standards Enforcement shall enforce the requirements of this Chapter. The Director may issue regulations for the implementation and administration of this Chapter. The Director may, in consultation with the Office of Labor Standards Enforcement, issue regulations for the enforcement of this Chapter. The Director

may delegate, in writing, responsibilities to other departments, offices, employees, officers, or agents of the City and County. Each City department, when requested by the Director, shall cooperate with the Director in the implementation or administration of this Chapter, and when requested by the Director or Office of Labor Standards Enforcement, shall cooperate with the enforcement of this Chapter by providing relevant information that is in the department's possession and control, and providing any other assistance that it is feasible for the department to provide. The City and County may, subject to the Charter, including without limitation its budgetary and fiscal provisions, and the Municipal Codes, enter into contracts with any entity and cooperative agreements or arrangements with any public entity for assistance in implementing, administering or enforcing this Chapter, and shall explore efficient and cost-effective mechanisms for ensuring the compliance of Contractors.

(b) Until such time as the City and County determines that it is able to adequately monitor compliance with this Chapter using City personnel, the City and County shall, subject to the Charter, including without limitation its budgetary and fiscal provisions, and the Municipal Codes, enter into an agreement with an independent non-profit organization with expertise in monitoring and reporting on Sweatshop Labor for assistance monitoring the compliance of Contractors. This subsection does not in anyway limit the City's ability to contract for assistance under subsection 12U.7(a).

(c) Each Contractor and Subcontractor shall cooperate fully with any investigation of the Director, the Office of Labor Standards Enforcement, the Director's designee or contractors, including without limitation any independent non-profit monitor, and other City employees and agents authorized to assist in the implementation, administration or enforcement of this Chapter. Such persons or entities shall, in the performance of their duties, have the right to engage in random inspections of any worksite where the Contract or any Subcontract is per-

formed and have access to any Worker or any record required to be maintained in Section 12U.3.

(d) Any failure of a Contractor or Subcontractor to perform in accordance with this Chapter shall be a material breach of the Contract. In such an event, the City and County may take any or all of the following actions:

(1) Assess liquidated damages as provided for in the Contract.

(2) Terminate the Contract.

(3) Commence debarment proceedings pursuant to Chapter 28 of this Code against the Contractor, where the Contractor has failed to comply with this Chapter, or against the Subcontractor, or Contractor and Subcontractor, where the Subcontractor has failed to comply with this Chapter.

(4) Withhold payments under the Contract until the Contractor or its Subcontractor is in full compliance with this Chapter.

(5) Require the Contractor or Subcontractor, at its expense, to provide training and best practices guidelines to managers and employees at the facility or operation where the violation occurred to ensure future compliance. Upon request by the Director or the Director's designee, the Contractor or Subcontractor shall submit such materials for the City and County's review and approval prior to distribution to managers and employees.

(6) Any Contractor or Subcontractor shall provide the Director or the Director's designees or contractor, and other City employees and agents authorized to assist in the administration and enforcement of this Chapter immediate access to the facility or operation where the violation has occurred for an inspection of the facility or operation and records, and interviews of Workers.

(7) During the term of the Contract, but not more than once every 30 days, the Director, the Office of Labor Standards Enforcement, or the Director's designee may require the Contractor or Subcontractor to provide a written summary of the steps taken to remedy the noncompliance and any difficulties encountered in curing the

noncompliance. The request may require the response to be submitted under penalty of perjury. The Contractor or Subcontractor shall provide the written summary within the time period specified by the Director, the Office of Labor Standards Enforcement, or the Director's designee, which shall not be less than 14 days from receipt of the request.

(8) Pursue any other remedies available to the City and County at law or in equity. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.8. EFFECTIVE DATE.

This Chapter shall be effective ninety days after it is adopted. This legislation is intended to have prospective effect only. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.9. EXCEPTIONS.

This Chapter shall not apply in the following circumstances:

(a) When a Contract involves the expenditure of funds received by the City and County and the application of this Chapter would violate or be inconsistent with the terms or conditions of the applicable grant agreement, subvention or agreement or the instructions of an authorized representative of any such agency with respect to any such grant agreement, subvention or agreement.

(b) When the Director or the Director's designee determines that there is only one responsible contractor available to provide the Goods and that contractor is unable to comply with this Chapter, or the City and County department, commission, office or other City and County entity seeking to enter into the contract certifies in writing to the Director, and the Director finds that there are no qualified responsive bidders or proposers or prospective contractors that would comply with the requirements of this Chapter and the Contract is for Goods that are essential to the City or the public. This subsection (b) is subject to the provisions of Section 12U.9.5. If a waiver is granted pursuant to this subsection (b),

the Contract entered into as a result of the waiver may be for a term of no greater than two years.

(c) When the Contract is with a public entity.

(d) When the acquisition of Goods is only incidental to the other purchases under the Contract. The acquisition of Goods shall be incidental if the amount paid by the City for the Goods is 10 percent or less than the total amount of the Contract.

(e) If the department recommending the Contract certifies in writing to the Director that pursuant to Administrative Code Section 6.60 or 21.15 that the Contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Chapter capable of responding to the emergency is immediately available. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005; Ord. 265-07, File No. 071369, App. 11/14/2007)

SEC. 12U.9.5. AWARD OF CONTRACT ABSENT A SWEATFREE-COMPLIANT BID OR PROPOSAL.

(a) It is the City's goal to achieve full compliance with this Chapter. But, in the absence of bids or proposals that are fully compliant with the provisions of this Chapter, the City should have authority to award Contracts to the bidder or proposer that is most compliant with this Chapter. If, in response to a solicitation for bids or a request for proposals, the City receives no bids or proposals that are fully compliant with the provisions of this Chapter, the Director is authorized to enter into a Contract with a non-compliant bidder or proposer, according to the following principles.

(b) Notwithstanding the determination of low bid or highest ranked proposal, the Director shall have authority to determine which bidder or proposer most substantially complies with this Chapter, and shall award the Contract to that bidder or proposer.

(c) No Contract awarded pursuant to subsection (b) may exceed two years in term unless the Director determines, no later than six months prior to the expiration of the original term of the Contract, that the Contractor has achieved an additional level or levels of compliance with the provisions of this Chapter that warrants exercise of an option to extend the Contract for up to an additional year.

(d) Any Contract awarded pursuant to subsection (b) shall be terminated by the Director during the original term of the Contract or any extension of the original term if the Director determines that the Contractor (i) is not making a good faith effort to achieve an additional level or levels of compliance with the provisions of this Chapter or (ii) has not corrected within a reasonable time, as defined by the Director, a specific violation of this Chapter that the City discovers after award of the Contract. In addition, the Director shall include in any Contract awarded pursuant to subsection (b) a compliance plan that identifies deficiencies in the bid or proposal and specifies a condition or conditions and related timetables designed to achieve an additional level or levels of compliance with the provisions of this Chapter no later than six months prior to the expiration of the original term of the Contract; and failure of the Contractor to satisfy said compliance plan may serve as the basis for the Director to terminate the Contract.

(e) Standards for determining most substantial compliance under subsection (b) and additional level or levels of compliance under subsections (c) and (d) shall be adopted by the Director following consultation with the Office of Labor Standards Enforcement and the Sweatfree Procurement Advisory Group, and a public hearing. Such standards shall give due consideration to the City's need to receive information from bidders and Contractors to enable the City to monitor compliance with this Chapter; the degree to which a particular requirement of the Ordinance is not being complied with by a bidder or Contractor; the number of requirements of the Ordinance that are not being complied with by a bidder or Contractor; practical difficulties faced

by bidders and/or Contractors generally in complying with a particular requirement of the Ordinance; the relative importance, if ascertainable, of the different labor standards set forth in Section 12U.3; and such other factors as may be relevant to achieving maximum compliance with this Chapter.

Such standards shall become operative on the effective date of this Section if they are adopted by the Director before then. Such standards shall become operative on the date they are adopted by the Director if that occurs after the effective date of this Section.

In addition, the Director has authority to adopt rules and procedures that implement this Section.

(f) The Director shall not award a Contract pursuant to subsection (b) where the cost of that contract would exceed the low bid or highest ranked proposal by more than 15 percent.

(g) The Director shall submit quarterly reports to the Board of Supervisors regarding the implementation of this Section and contracts issued to otherwise noncompliant bidders or proposers under this Section.

(h) Neither subsection (b) nor any other provision in this Section shall override the Director's authority to reject all bids or proposals or take other action within his or her legal authority. (Added by Ord. 265-07, File No. 071369, App. 11/14/2007)

SEC. 12U.10. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law. (Added by Ord. 223-05, File No. 051257, App. 9/16/2005)

SEC. 12U.11. SEVERABILITY.

If any part or provision of this Chapter or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue in full force and effect. To this end,

the provisions of this Chapter are severable.
(Added by Ord. 223-05, File No. 051257, App.
9/16/2005)

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CHAPTER 12V. PERSONAL SERVICES MINIMUM CONTRACTUAL RATE ORDINANCE

- Sec. 12V.1. Title.
- Sec. 12V.2. Definitions.
- Sec. 12V.3. Minimum Contractual Rate Requirement.
- Sec. 12V.4. Recordkeeping Requirement.
- Sec. 12V.5. Implementation and Enforcement.

SEC. 12V.1. TITLE.

This Chapter shall be known as the "Personal Services Minimum Contractual Rate Ordinance." (Added by Ord. 88-06, File No. 051724, App. 5/5/2006)

SEC. 12V.2. DEFINITIONS.

As used in this Chapter the following capitalized terms shall have the following meanings:

- (a) "Agency" shall mean the Office of Labor Standards Enforcement.
- (b) "City" shall mean the City and County of San Francisco.
- (c) "Contract" shall mean any oral or written agreement for Personal Services, regardless of whether a term is stated, in which the cost of such services is determined on an hourly, daily, weekly, or piece rate basis.
- (d) "Covered Contractor" shall mean a person that in a particular month provides at least twenty hours of Personal Services for one or more Covered Entities within the geographic boundaries of the City.
- (e) "Covered Entity" shall mean a person, firm, proprietorship, partnership, or corporation that in a particular month obtains, in the aggregate, twenty or more hours of Personal Services from one or more Covered Contractors within the geographic boundaries of the City pursuant to a Contract or Contracts.
- (f) "Minimum Contractual Rate" shall mean the minimum hourly rate of pay for Personal Services mandated by this Ordinance.

(g) "Personal Services" shall mean services provided personally by the individual or principal of an entity based on the intellectual or manual efforts of the individual rather than a salable product of his or her skills. (Added by Ord. 88-06, File No. 051724, App. 5/5/2006)

SEC. 12V.3. MINIMUM CONTRACTUAL RATE REQUIREMENT.

(a) A Covered Entity shall pay a Covered Contractor no less than the Minimum Contractual Rate for each hour worked within the geographic boundaries of the City.

(b) The Minimum Contractual Rate shall be equal to the Minimum Wage hourly rate set forth in Section 12R.4(b) of the Administrative Code, and shall increase automatically when the Minimum Wage increases. (Added by Ord. 88-06, File No. 051724, App. 5/5/2006)

SEC. 12V.4. RECORDKEEPING REQUIREMENT.

A Covered Entity shall retain records reflecting the number of hours worked by and payments to a Covered Contractor for a period of six months after the term of the Contract. If the Contract does not specify a term, the records shall be maintained for a period of one year after each payment. (Added by Ord. 88-06, File No. 051724, App. 5/5/2006)

SEC. 12V.5. IMPLEMENTATION AND ENFORCEMENT.

(a) **Implementation.** The Agency shall be authorized to implement and enforce this Chapter and may promulgate appropriate guidelines or rules for such purposes. The regulations shall establish procedures for monitoring Covered Entities, receiving and investigating complaints, and providing administrative hearings to determine whether a Covered Entity has violated this Chapter. The Agency shall not adopt finally such guideline or rules until the Agency has held a

public hearing. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by parties to Contracts for Personal Services and other parties to determine their rights and responsibilities under this Chapter.

(b) **Investigations and Audits.** The Agency shall monitor Covered Entities for compliance and investigate complaints of violations. A Covered Entity shall allow the Agency access to its records regarding Covered Contractor, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. A Covered Contractor or other person may report to the Agency in writing any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the Covered Contractor or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(c) **Determination of Violation.** Upon determining that a Covered Entity may have violated the terms of a Contract required under this Chapter, the Agency shall send written notice to the Covered Entity of the possible violation and of the Covered Entity's right to respond to the Agency's initial determination by submitting pertinent documents and other information. If after providing the Covered Entity with a reasonable opportunity to respond to the allegations the Agency makes a final determination that a violation has occurred, the Agency shall provide a written notice of violation to the Covered Entity.

(d) **Administrative Penalties and Other Relief.** Where the Agency has found a violation has occurred, it may order any appropriate relief, including, but not limited to, restitution at the appropriate contractual rate. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating Covered Entity or person

to pay to the City a sum of not more than \$50 for each day or portion thereof and for each Covered Contractor or person as to whom the violation occurred or continued. Such funds shall be allocated to the Agency and shall be used to offset the costs of implementing and enforcing this Chapter. The amounts of all sums and payments authorized or required under this Chapter shall be updated annually for inflation, beginning January 1, 2006, using the inflation rate and procedures set forth in Section 4(b) of Chapter 12.R of this Code.

(e) **Right to Appeal.** The Covered Entity may appeal the Agency's final determination. The Covered Entity must file an appeal with the Agency in writing, specifying the basis for contesting the determination, no later than 15 days after the date of the notice of determination. Failure to file an appeal in writing with the Agency within 15 days shall cause the Agency's determination to be deemed a final administrative decision by the City.

(f) **Administrative Hearing.**

(1) Within 15 days after the Agency receives an appeal, the Controller shall appoint a hearing officer and shall notify the Agency and the Covered Entity.

(2) The hearing officer shall promptly set a date for a hearing. The hearing shall commence within 45 days of the notification of the appointment of the hearing officer and conclude within 75 days of such notification, unless all parties agree to an extended period.

(3) The Agency shall have the burden of producing evidence that the Covered Entity has violated the requirements of this Chapter and the burden of proving the violation.

(g) **Hearing Officer's Decision.**

(1) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision consisting of findings and a decision affirming, modifying, or vacating the Agency's determination. If the hearing officer affirms the Agency's determination, the hearing officer shall issue a decision upholding the Agency's determination.

(2) The decision of the hearing officer shall be final. The Covered Entity may seek review of the hearing officer's decision only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure, section 1094.5, as may be amended from time to time.

(3) The failure of the Agency or hearing officer to comply with the time requirements of this Section shall not cause the hearing officer to lose jurisdiction over an appeal from the Agency's determination filed under this Section.

(4) Upon receiving the hearing officer's decision affirming the Agency's determination, the Covered Entity shall take the corrective action, including the payment of liquidated damages, if any, within 14 days of receiving the hearing officer's decision. If a Covered Entity fails to take corrective action within the time required by the provisions of this Section, the City may immediately pursue all available remedies against the Contractor.

(h) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable state law, may bring a civil action in a court of competent jurisdiction against the Covered Entity or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, without limitation, restitution at the appropriate contractual rate, and shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs. (Added by Ord. 88-06, File No. 051724, App. 5/5/2006)

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CHAPTER 12W: SICK LEAVE*

- Sec. 12W.1. Title.
- Sec. 12W.2. Definitions.
- Sec. 12W.3. Accrual of Paid Sick Leave.
- Sec. 12W.4. Use of Paid Sick Leave.
- Sec. 12W.5. Notice and Posting.
- Sec. 12W.6. Employer Records.
- Sec. 12W.7. Exercise of Rights Protected; Retaliation Prohibited.
- Sec. 12W.8. Implementation and Enforcement.
- Sec. 12W.9. Waiver Through Collective Bargaining.
- Sec. 12W.10. Other Legal Requirements.
- Sec. 12W.11. More Generous Employer Leave Policies.
- Sec. 12W.12. Operative Date.
- Sec. 12W.13. Preemption.
- Sec. 12W.14. City Undertaking Limited to Promotion of the General Welfare.
- Sec. 12W.15. Severability.
- Sec. 12W.16. Amendment by the Board of Supervisors.

SEC. 12W.1. TITLE.

This Chapter shall be known as the "Sick Leave Ordinance." (Added by Proposition F, 11/7/2006)

SEC. 12W.2. DEFINITIONS.

For purposes of this Chapter, the following definitions apply.

(a) "Agency" shall mean the Office of Labor Standards Enforcement or any department or office that by ordinance or resolution is designated the successor to the Office of Labor Standards Enforcement.

***Editor's Note:**

Proposition F, approved November 7, 2006, added provisions designated as a new Ch. 12W, Sick Leave, to read as herein set out. At the request of the city, former Ch. 12W, pertaining to the San Francisco Slavery Disclosure Ordinance, has been renumbered as Ch. 12Y.

(b) "City" shall mean the City and County of San Francisco.

(c) "Employee" shall mean any person who is employed within the geographic boundaries of the City by an employer, including part-time and temporary employees. "Employee" includes a participant in a Welfare-to-Work Program when the participant is engaged in work activity that would be considered "employment" under the federal Fair Labor Standards Act, 29 U.S.C. §201 et seq., and any applicable U.S. Department of Labor Guidelines. "Welfare-to-Work Program" shall include any public assistance program administered by the Human Services Agency, including but not limited to CalWORKS and the County Adult Assistance Program (CAAP), and any successor programs that are substantially similar to them, that require a public assistance applicant or recipient to work in exchange for their grant.

(d) "Employer" shall mean any person, as defined in Section 18 of the California Labor Code, including corporate officers or executives, who directly or indirectly or through an agent or any other person, including through the services of a temporary services or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee.

(e) "Paid sick leave" shall mean paid "sick leave" as defined in California Labor Code § 233(b)(4), except that the definition extends beyond the employee's own illness, injury, medical condition, need for medical diagnosis or treatment, or medical reason, to also encompass time taken off work by an employee for the purpose of providing care or assistance to other persons, as specified further in Section 12W.4(a), with an

illness, injury, medical condition, need for medical diagnosis or treatment, or other medical reason.

(f) "Small business" shall mean an employer for which fewer than ten persons work for compensation during a given week. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. (Added by Proposition F, 11/7/2006)

SEC. 12W.3. ACCRUAL OF PAID SICK LEAVE.

(a) For employees working for an employer on or before the operative date of this Chapter, paid sick leave shall begin to accrue as of the operative date of this Chapter. For employees hired by an employer after the operative date of this Chapter, paid sick leave shall begin to accrue 90 days after the commencement of employment with the employer.

(b) For every 30 hours worked after paid sick leave begins to accrue for an employee, the employee shall accrue one hour of paid sick leave. Paid sick leave shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of paid sick leave.

(c) For employees of small businesses, there shall be a cap of 40 hours of accrued paid sick leave. For employees of other employers, there shall be a cap of 72 hours of accrued paid sick leave. Accrued paid sick leave for employees carries over from year to year (whether calendar year or fiscal year), but is limited to the aforementioned caps.

(d) If an employer has a paid leave policy, such as a paid time off policy, that makes available to employees an amount of paid leave that may be used for the same purposes as paid sick leave under this Chapter and that is sufficient to meet the requirements for accrued paid sick

leave as stated in subsections (a)-(c), the employer is not required to provide additional paid sick leave.

(e) An employer is not required to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment, for accrued paid sick leave that the employee has not used. (Added by Proposition F, 11/7/2006)

SEC. 12W.4. USE OF PAID SICK LEAVE.

(a) An employee may use paid sick leave not only when he or she is ill or injured or for the purpose of the employee's receiving medical care, treatment, or diagnosis, as specified more fully in California Labor Code § 233(b)(4), but also to aid or care for the following persons when they are ill or injured or receiving medical care, treatment, or diagnosis: Child; parent; legal guardian or ward; sibling; grandparent; grandchild; and spouse, registered domestic partner under any state or local law, or designated person. The employee may use all or any percentage of his or her paid sick leave to aid or care for the aforementioned persons. The aforementioned child, parent, sibling, grandparent, and grandchild relationships include not only biological relationships but also relationships resulting from adoption; step-relationships; and foster care relationships. "Child" includes a child of a domestic partner and a child of a person standing in loco parentis.

If the employee has no spouse or registered domestic partner, the employee may designate one person as to whom the employee may use paid sick leave to aid or care for the person. The opportunity to make such a designation shall be extended to the employee no later than the date on which the employee has worked 30 hours after paid sick leave begins to accrue pursuant to Section 12W.3(a). There shall be a window of 10 work days for the employee to make this designation. Thereafter, the opportunity to make such a designation, including the opportunity to change such a designation previously made, shall be

extended to the employee on an annual basis, with a window of 10 work days for the employee to make the designation.

(b) An employer may not require, as a condition of an employee's taking paid sick leave, that the employee search for or find a replacement worker to cover the hours during which the employee is on paid sick leave.

(c) An employer may require employees to give reasonable notification of an absence from work for which paid sick leave is or will be used.

(d) An employer may only take reasonable measures to verify or document that an employee's use of paid sick leave is lawful. (Added by Proposition F, 11/7/2006)

SEC. 12W.5. NOTICE AND POSTING.

(a) The Agency shall, by the operative date of this Chapter, publish and make available to employers, in all languages spoken by more than 5% of the San Francisco workforce, a notice suitable for posting by employers in the workplace informing employees of their rights under this Chapter. The Agency shall update this notice on December 1 of any year in which there is a change in the languages spoken by more than 5% of the San Francisco workforce. In its discretion, the Agency may combine the notice required herein with the notice required by Section 12R.5(a) of the Administrative Code.

(b) Every employer shall post in a conspicuous place at any workplace or job site where any employee works the notice required by subsection (a). Every employer shall post this notice in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace or job site. (Added by Proposition F, 11/7/2006)

SEC. 12W.6. EMPLOYER RECORDS.

Employers shall retain records documenting hours worked by employees and paid sick leave taken by employees, for a period of four years, and shall allow the Agency access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this Chapter. When an issue arises

as to an employee's entitlement to paid sick leave under this Chapter, if the employer does not maintain or retain adequate records documenting hours worked by the employee and paid sick leave taken by the employee, or does not allow the Agency reasonable access to such records, it shall be presumed that the employer has violated this Chapter, absent clear and convincing evidence otherwise. (Added by Proposition F, 11/7/2006)

SEC. 12W.7. EXERCISE OF RIGHTS PROTECTED; RETALIATION PROHIBITED.

It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this Chapter.

It shall be unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Such rights include but are not limited to the right to use paid sick leave pursuant to this Chapter; the right to file a complaint or inform any person about any employer's alleged violation of this Chapter; the right to cooperate with the Agency in its investigations of alleged violations of this Chapter; and the right to inform any person of his or her potential rights under this Chapter.

It shall be unlawful for an employer absence control policy to count paid sick leave taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action.

Protections of this Chapter shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

Taking adverse action against a person within 90 days of the person's filing a complaint with the Agency or a court alleging a violation of any provision of this Chapter; informing any person about an employer's alleged violation of this Chapter; cooperating with the Agency or other persons in the investigation or prosecution of

any alleged violation of this Chapter; opposing any policy, practice, or act that is unlawful under this Chapter; or informing any person of his or her rights under this Chapter shall raise a rebuttable presumption that such adverse action was taken in retaliation for the exercise of one or more of the aforementioned rights. (Added by Proposition F, 11/7/2006)

SEC. 12W.8. IMPLEMENTATION AND ENFORCEMENT.

(a) **Implementation.** The Agency shall be authorized to coordinate implementation and enforcement of this Chapter and may promulgate appropriate guidelines or rules for such purposes. Any guidelines or rules promulgated by the Agency shall have the force and effect of law and may be relied on by employers, employees, and other persons to determine their rights and responsibilities under this Chapter. Any guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of this Chapter, including supplementary procedures for helping to inform employees of their rights under this Chapter, for monitoring employer compliance with this Chapter, and for providing administrative hearings to determine whether an employer or other person has violated the requirements of this Chapter.

(b) **Administrative Enforcement.** The Agency is authorized to take appropriate steps to enforce this Chapter. The Agency may investigate any possible violations of this Chapter by an employer or other person. Where the Agency has reason to believe that a violation has occurred, it may order any appropriate temporary or interim relief to mitigate the violation or maintain the status quo pending completion of a full investigation or hearing.

Where the Agency, after a hearing that affords a suspected violator due process, determines that a violation has occurred, it may order any appropriate relief including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, and the payment of an additional sum as an administrative penalty to each employee or person whose rights under this Chapter were violated. If any paid

sick leave was unlawfully withheld, the dollar amount of paid sick leave withheld from the employee multiplied by three, or \$250.00, whichever amount is greater, shall be included in the administrative penalty paid to the employee. In addition, if a violation of this Chapter resulted in other harm to the employee or any other person, such as discharge from employment, or otherwise violated the rights of employees or other persons, such as a failure to post the notice required by Section 12W.5(b), or an act of retaliation prohibited by Section 12W.7, this administrative penalty shall also include \$50.00 to each employee or person whose rights under this Chapter were violated for each day or portion thereof that the violation occurred or continued.

Where prompt compliance is not forthcoming, the Agency may take any appropriate enforcement action to secure compliance, including initiating a civil action pursuant to Section 12W.8(c) and/or, except where prohibited by State or Federal law, requesting that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the employer or person until such time as the violation is remedied. In order to compensate the City for the costs of investigating and remedying the violation, the Agency may also order the violating employer or person to pay to the City a sum of not more than \$50.00 for each day or portion thereof and for each employee or person as to whom the violation occurred or continued. Such funds shall be allocated to the agency and used to offset the costs of implementing and enforcing this Chapter.

An employee or other person may report to the agency any suspected violation of this Chapter. The Agency shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation. Provided, however, that with the authorization of such person, the Agency may disclose his or her name and identifying information as necessary to enforce this Chapter or for other appropriate purposes.

(c) **Civil Enforcement.** The Agency, the City Attorney, any person aggrieved by a violation of this Chapter, any entity a member of which is aggrieved by a violation of this Chapter, or any other person or entity acting on behalf of the public as provided for under applicable State law, may bring a civil action in a court of competent jurisdiction against the employer or other person violating this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation including, but not limited to, reinstatement, back pay, the payment of any sick leave unlawfully withheld, the payment of an additional sum as liquidated damages in the amount of \$50.00 to each employee or person whose rights under this Chapter were violated for each hour or portion thereof that the violation occurred or continued, plus, where the employer has unlawfully withheld paid sick leave to an employee, the dollar amount of paid sick leave withheld from the employee multiplied by three; or \$250.00, whichever amount is greater; and reinstatement in employment and/or injunctive relief; and, further, shall be awarded reasonable attorneys' fees and costs. Provided, however, that any person or entity enforcing this Chapter on behalf of the public as provided for under applicable State law shall, upon prevailing, be entitled only to equitable, injunctive or restitutionary relief, and reasonable attorneys' fees and costs.

(d) **Interest.** In any administrative or civil action brought under this Chapter, the Agency or court, as the case may be, shall award interest on all amounts due and unpaid at the rate of interest specified in subdivision (b) of Section 3289 of the California Civil Code.

(e) **Remedies Cumulative.** The remedies, penalties, and procedures provided under this Chapter are cumulative. (Added by Proposition F, 11/7/2006)

SEC. 12W.9. WAIVER THROUGH COLLECTIVE BARGAINING.

All or any portion of the applicable requirements of this Chapter shall not apply to employees covered by a bona fide collective bargaining

agreement to the extent that such requirements are expressly waived in the collective bargaining agreement in clear and unambiguous terms. (Added by Proposition F, 11/7/2006)

SEC. 12W.10. OTHER LEGAL REQUIREMENTS.

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for greater accrual or use by employees of sick leave, whether paid or unpaid, or that extends other protections to employees. (Added by Proposition F, 11/7/2006)

SEC. 12W.11. MORE GENEROUS EMPLOYER LEAVE POLICIES.

This Chapter provides minimum requirements pertaining to paid sick leave and shall not be construed to prevent employers from adopting or retaining leave policies that are more generous than policies that comply with this Chapter. Employers are encouraged to provide more generous leave policies than required by this Chapter. (Added by Proposition F, 11/7/2006)

SEC. 12W.12. OPERATIVE DATE.

This Chapter shall become operative 90 days after its adoption by the voters at the November 7, 2006 election. This Chapter shall have prospective effect only. (Added by Proposition F, 11/7/2006)

SEC. 12W.13. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power or duty in conflict with federal or state law. (Added by Proposition F, 11/7/2006)

SEC. 12W.14. CITY UNDERTAKING LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Chapter, the City is undertaking only to promote the general welfare. The City is not assuming, nor is it imposing on its officers

and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. This Chapter does not create a legally enforceable right by any member of the public against the City. (Added by Proposition F, 11/7/2006)

SEC. 12W.15. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provision to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Proposition F, 11/7/2006)

SEC. 12W.16. AMENDMENT BY THE BOARD OF SUPERVISORS.

The Board of Supervisors may amend this Chapter with respect to matters relating to its implementation and enforcement (including but not limited to those matters addressed in Section 12W.8) and matters relating to employer requirements for verification or documentation of an employee's use of sick leave, but not with respect to this Chapter's substantive requirements or scope of coverage; provided, however, that, in the event any provision in this Chapter is held legally invalid, the Board retains the power to adopt legislation concerning the subject matter that was covered in the invalid provision. (Added by Proposition F, 11/7/2006)

CHAPTER 12X: POLICY MAKING MARIJUANA OFFENSES THE LOWEST LAW ENFORCEMENT PRIORITY

- Sec. 12X.1. Title.
- Sec. 12X.2. Purpose.
- Sec. 12X.3. Findings.
- Sec. 12X.4. Definitions.
- Sec. 12X.5. Lowest Law Enforcement Priority.
- Sec. 12X.6. Community Oversight.
- Sec. 12X.7. Marijuana Policy Reform.
- Sec. 12X.8. General Welfare Clause.
- Sec. 12X.9. Severability.

SEC. 12X.1. TITLE.

This chapter shall be known as the Policy Making Marijuana Offenses the Lowest Law Enforcement Priority. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.2. PURPOSE.

The purpose of this chapter is to:

(a) Make investigation, citations, arrests, and property seizures from adults for marijuana offenses the City and County of San Francisco's lowest law enforcement priority;

(b) Establish a City and County policy supporting changes in state and federal laws that support a system of taxation and regulation for adult use of marijuana; and

(c) Transmit notification of the enactment of this chapter to State and Federal elected officials who represent the City and County of San Francisco. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.3. FINDINGS.

(a) The federal government's war on drugs has failed. Otherwise law-abiding adults are being arrested and imprisoned for nonviolent marijuana offenses, which is clogging courts and jails in California. Each year California spends over \$150 million of taxpayer money enforcing marijuana laws. Decades of arresting millions of

marijuana users have failed to control marijuana use or reduce its availability. Minorities are disproportionately impacted by marijuana laws, with African Americans five times more likely to be arrested for marijuana offenses.

(b) San Francisco should determine its marijuana policies locally, not hand them over to the federal Drug Enforcement Administration. Many recreational marijuana users are productive citizens who work and pay taxes. Current marijuana policies continue to needlessly harm medical marijuana patients. Law enforcement resources would be better spent fighting serious and violent crimes. Making adult marijuana offenses San Francisco's lowest law enforcement priority will reduce expenditures on law enforcement and punishment of these offenses.

(c) It is the hope of the citizens of San Francisco that the Federal and California State governments will change the laws to tax and regulate marijuana, so as to eliminate costs and problems of prohibition, keep marijuana off the streets and away from children, and raise tax revenues for vital public services. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.4. DEFINITIONS.

For the purposes of this ordinance, the following words and phrases shall be defined as follows:

(a) "Adult" means an individual who is 18 years of age or older.

(b) "San Francisco law enforcement officer" means any peace officer employed by the City and County of San Francisco, and any other employee of the City and County who is authorized to engage in law enforcement activity. "San Francisco law enforcement officer" does not include the District Attorney or anyone acting on behalf of the District Attorney.

(c) "Lowest law enforcement priority" means that all law enforcement activities related to offenses other than marijuana offenses by adults shall be given a higher priority than law enforcement activities related to marijuana offenses by adults, except as provided below.

(d) "Marijuana" means all parts of the plant Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.5. LOWEST LAW ENFORCEMENT PRIORITY.

(a) San Francisco Law Enforcement Officers shall make law enforcement activity relating to marijuana offenses by adults their lowest law enforcement priority. Law enforcement activities include, but are not limited to, investigation, citation, arrest, and seizure of property.

(b) This lowest law enforcement priority policy shall not apply to the following:

(1) Distribution or sale of marijuana to minors;

(2) Possession, use, sale or distribution of marijuana by minors;

(3) Distribution or sale of marijuana on public property (including public streets, sidewalks, parks, buildings or other public property) or within view of any person on public property, provided that the lowest law enforcement shall apply to distribution or sale of marijuana occurring entirely within a private residence or other private building, except as otherwise provided in Sections 12X.5(b)(1), (2) or (5);

(4) Driving under the influence; or

(5) A marijuana offense that occurs in conjunction with or is related to an act or threat of violence, or where law enforcement officers reasonably believe that the marijuana offense poses a substantial threat of serious physical harm to the public.

(c) The City and County of San Francisco urges the District Attorney to adopt a policy making prosecution of adults for marijuana offenses, as described herein, the lowest prosecutorial priority.

(d) This lowest law enforcement priority policy shall apply to cooperating with federal agents to arrest, cite, investigate, prosecute, or seize property from adults for marijuana offenses included in the lowest law enforcement priority policy, where those marijuana offenses do not occur in conjunction with other criminal activity.

(e) San Francisco law enforcement officers and other City and County employees shall not accept or renew formal deputization or commissioning by a Federal law enforcement agency if such deputization or commissioning is for the sole or primary purpose of investigating, citing, arresting, or seizing property from adults for marijuana offense included in the lowest law enforcement priority policy.

(f) The City and County of San Francisco shall not accept any Federal funding that would be used solely or primarily to investigate, cite, arrest, or seize property from adults for marijuana offenses. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.6. COMMUNITY OVERSIGHT.

(a) An advisory Community Oversight Committee shall monitor the implementation of section 12X of the Administrative Code. The Community Oversight Committee shall consist of seven voting members appointed by the Board of Supervisors. Members shall serve at the pleasure of the Board of Supervisors, for a term of two years. The Board shall appoint one member with each of the following qualifications or backgrounds:

- (1) One medical cannabis patient;
- (2) One member of the public defender's office;
- (3) One representative of a medical cannabis dispensary operating in San Francisco;
- (4) One civil liberties advocate;
- (5) One harm reduction practitioner;

(6) One representative of a drug policy reform organization; and

(7) One representative from any of the following categories: juvenile justice advocate, advocate for homeless persons, resident of public housing, or representative of an organization providing services to or advocating on behalf of residents of public housing in San Francisco.

(b) The Police Department, the Department of Public Health and the District Attorney are encouraged to send one representative as a non-voting liaison to the advisory committee.

(c) At the initial meeting of the advisory committee, and annually thereafter, the committee shall select a chairperson, and any other officers deemed necessary by the committee. Consistent with the requirements of state and local law, the committee shall establish rules for its own organization. All meetings shall be open to the public, except as provided by law.

(d) The Community Oversight Committee shall:

(1) Monitor the implementation of this Ordinance by gathering information, with the cooperation of the San Francisco Police Department and other law enforcement agencies.

(2) Receive statements from individuals who believe they were subjected to law enforcement activity contrary to the lowest law enforcement priority policy.

(3) Design a supplemental report form for San Francisco law enforcement officers to use to report all adult marijuana arrests, citation, and property seizures, and all instances of officers assisting in federal arrests, citations, and property seizures for any marijuana offenses by adults within the City and County of San Francisco. The Community Oversight Committee shall design the supplemental report with the goal of allowing the Committee to ascertain whether San Francisco law enforcement officers followed the lowest law enforcement priority policy.

(4) Request additional information from any San Francisco Law Enforcement Officer who engaged in law enforcement activity relating to one or more marijuana offenses under circumstances that appear to violate the lowest law

enforcement priority policy. An officer's decision not to provide additional information shall not be grounds for discipline.

(5) Submit written reports semi-annually to the San Francisco Board of Supervisors on the implementation of this Ordinance. The Community Oversight Committee shall submit the first report no later than nine months after the effective date of this ordinance. The report shall include but not necessarily be limited to: the number of arrests, citations, property seizures, and prosecutions of adults for marijuana offenses in the City and County of San Francisco; the breakdown of marijuana arrests and citations of adults by race, age, specific charge, and classification as infraction, misdemeanor, or felony; any instances of law enforcement activity that the Committee believes violated the lowest law enforcement priority policy; and the estimated time and money spent by the City and County on law enforcement and punishment of adults for marijuana offenses. The report shall comply with all state and local confidentiality laws.

(6) Within one year of the effective date of this Ordinance, make recommendations to the Police Department and Police Commission regarding regulations for implementing this Ordinance.

(7) Recommend to the Board of Supervisors policy changes that would further the purposes of this Chapter. (Added by Ord. 296-06, File No. 061554, App. 11/29/2006)

SEC. 12X.7. MARIJUANA POLICY REFORM.

(a) It shall be the policy of the City and County of San Francisco to support policies to tax and regulate marijuana for adults.

(b) Beginning three months after the effective date of this Ordinance and continuing annually thereafter, the Clerk of the Board of Supervisors shall send letters to Governor of California, the President of the United States, and all elected officials representing San Franciscans in the U.S. House of Representatives, the U.S. Senate, the California Assembly and the California Senate. The letters shall state, "The Board of Super-

visors of the City and County of San Francisco has passed an ordinance to deprioritize marijuana offenses by adults, and requests that the Federal and California State governments take immediate steps to tax and regulate marijuana use, cultivation, and distribution and to authorize State and local communities to do the same." The Clerk shall send this letter annually until State and Federal laws are changed accordingly. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.8. GENERAL WELFARE CLAUSE.

In undertaking the enforcement of this Ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

SEC. 12X.9. SEVERABILITY.

The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances. (Added by Ord. 297-06, File No. 061295, App. 11/29/2006)

CHAPTER 12Y: SAN FRANCISCO SLAVERY DISCLOSURE ORDINANCE*

- Sec. 12Y.1. Findings and Purpose.
- Sec. 12Y.2. Definitions.
- Sec. 12Y.3. Exceptions.
- Sec. 12Y.4. Slavery Era Disclosure.
- Sec. 12Y.5. Voluntary Contributions to Ameliorate the Effects of Slavery.
- Sec. 12Y.6. Enforcement.
- Sec. 12Y.7. Severability.

SEC. 12Y.1. FINDINGS AND PURPOSE.

The Board of Supervisors of the City and County of San Francisco hereby finds and declares that:

(a) Insurance policies from the American slavery era, which have been discovered in the archives of several insurance companies, document insurance coverage to slaveholders for damage to or death of people subjected to slavery. In some cases, existing insurance firms or their predecessor firms issued these policies.

(b) Further records may exist showing that insurance companies, financial services firms, and textile companies, either directly or through their parent entities, subsidiaries, predecessors in interest, or otherwise, bought or sold people subjected to slavery, provided property insurance covering people subjected to slavery, provided loans to purchase people subjected to slavery, used people subjected to slavery as collateral for insurance policies or other transactions, profited from the trade in people subjected to slavery, and/or provided related services to aid and abet such trade.

(c) Discovery and publication of these records is an important first step in addressing the legacy of slavery in this country. For example, in

June of 2005, the Wachovia Corporation, in the course of complying with a Chicago law similar to this Ordinance, discovered that some of its predecessor companies owned slaves and used slaves as collateral for loans. Wachovia issued an apology for the actions of its predecessor companies, and called for a "stronger dialogue about slavery and the experience of African-Americans in our country."

(d) Insurance policies, loan documents and other documents and records provide evidence of ill-gotten profits from slavery, which profits, in part, capitalized insurers, financial services providers and textile companies. The successors of these companies remain in existence today, and such profits from the uncompensated labor of enslaved Africans represent a continuing legacy of slavery.

(e) Slavery was legal at the time that the contemptible practices outlined above occurred, but that does not make the practices any less repugnant, abhorrent or deplorable, nor in any way diminish the gravity of these wrongs or the importance of rectifying and remediating these travesties.

(f) Deplorable treatment of Africans brought to this country as slaves was not limited to the southern states. In 1852, the California Legislature passed a California Fugitive Slave Act that gave white men the power to arrest Africans who they claimed were slaves, and return them to southern slave states. California's first governor, Peter Burnet, recommended during the first session of the California Legislature that the Assembly adopt a bill to exclude "Free Negroes" from California. In 1858, the Assembly passed House Bill 395, "an Act to Restrict and Prevent the Immigration to and Residence in this State of

***Editor's Note:**

Proposition F, approved November 7, 2006, added provisions designated as a new Ch. 12W, Sick Leave, to read as herein set out. At the request of the city, former Ch. 12W, pertaining to the San Francisco Slavery Disclosure Ordinance, has been renumbered as Ch. 12Y.

Negroes and Mulattoes." These laws, and others like them, were a major factor in the decision of several hundred African men and women to migrate from San Francisco to Victoria, Canada.

(g) Many San Francisco residents are descendants of people subjected to slavery, people who were defined as private property and insured as such, people who were used as collateral for insurance policies, loans and other transactions, were dehumanized, snatched from their families, and coerced into performing labor without appropriate compensation or benefits.

(h) Appropriate compensation to Africans for their labor would have been bequeathed to their descendants to assist them in developing a solid economic base that included individual wealth and thriving African American community institutions, thereby providing a level playing field and ensuring equal opportunity in this country.

(i) The City and County of San Francisco acknowledges the loss of assets that rightfully should be the property of descendants of African people subjected to slavery, and extends its apologies to their descendants who continue to suffer the legacy of slavery.

(j) The San Francisco Board of Supervisors pays tribute to and honors the people subjected to slavery who toiled and sacrificed their lives in building this country's economic foundation, and also honors descendants of those people subjected to slavery in America who, notwithstanding the degradation of slavery and discrimination, and the systematic efforts to deprive them of a sense of family, human dignity and prosperity, have developed a vibrant community, culture, and creative genius, and have made untold contributions to the fabric of our society, in the absence of which this nation would not be recognizable.

(k) The effects of racism on the residents of the City and County of San Francisco have been well documented in the San Francisco Human Rights Commission's authorized study, *The Unfinished Agenda*, and in the Report of the 2004-2005 Civil Grand Jury for the City and County of San Francisco, *The More Things Change, The*

More They Stay The Same: The City and County of San Francisco and the San Francisco Unified School District Are Failing to Address the Educational Needs of the Bayview Hunters Point Community.

(l) The aforesaid residents, and all of the residents of San Francisco, are entitled to full disclosure of the information regarding the above-described transactions that compensated slaveholders for damages to and death of people subjected to slavery and provided other compensation and profits.

(m) In 2000, the California State Legislature passed Senate Bill 2199, authored by then State Senator Tom Hayden, entitled "Slavery Era Insurance Policies." Senate Bill 2199 (California Insurance Code section 13810 et seq.), effective January 1, 2001, requires that (1) the State Insurance Commissioner request and obtain information from insurers licensed and doing business in California regarding records of slaveholder insurance policies issued by predecessor corporations during the slavery era; (2) each insurer licensed and doing business in California research and report to the Insurance Commissioner with respect to any records in its possession or knowledge relating to insurance policies issued to slaveholders that provided coverage for damage to or death of people subjected to slavery; (3) the State Insurance Commissioner obtain the names of any slaveholders or people subjected to slavery described in the insurance records and make the information available to the public and the Legislature; and (4) descendants of people subjected to slavery, people who were defined as private property, dehumanized, divided from their families, forced to perform labor without appropriate compensation or benefits, and whose owners insured them as property, are entitled to full disclosure.

(n) The Board of Supervisors finds that full disclosure of the facts and acknowledgement of the depth and scope of the shameful commerce in slavery furthers healing in the San Francisco community, both on the part of those who have been and are continuing to be harmed, as well as those who profited from this abhorrent practice.

(o) The Board of Supervisors finds that the establishment of a fund to which contractors subject to this Ordinance and others may make voluntary contributions will promote healing and assist the City in rectifying and remedying some of the legacies of the shameful commerce in slavery, thereby protecting and promoting public health, safety and welfare of San Francisco residents and the San Francisco community.

(p) The purpose of this Ordinance is to promote full and accurate disclosure to the public of: slavery insurance policies, including but not limited to policies issued to slaveholders for damage to or death of persons subjected to slavery, and policies issued to insure business transactions and operations related to the traffic in persons subjected to slavery; evidence of purchase and sale of people subjected to slavery; provision of loans to purchase people subjected to slavery; use of people subjected to slavery as collateral for insurance policies, loans or other transactions; provision of any related services to aid and abet such transactions; and profits derived from the slave trade; by (i) any contractors providing insurance services or financial services to the City, and (ii) any textile companies doing business with the City.

(q) The purpose of this Ordinance is also is to establish a fund to which contractors subject to this ordinance and others may make voluntary contributions to promote healing and assist in remedying depressed economic conditions, poverty, unequal educational opportunity and other legacies of slavery era among the population of the City.

(r) This Ordinance promotes important policy objectives of the City, and the City will suffer actual damages due to contractors' failure to comply with this Ordinance. Because these actual damages will be impractical or extremely difficult to prove, the City is justified in imposing liquidated damages for failure to comply with this Ordinance. (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

SEC. 12Y.2. DEFINITIONS.

As used in this Chapter, the following capitalized terms shall have the following meanings:

(a) "Contract" shall mean an agreement between the City and any person, persons or other entity for public works or improvements to be performed, or for goods or services to be purchased, out of the treasury of the City and County, or out of trust monies under the control of or collected by the City and County.

(b) "Contract Amendment" shall mean an agreement entered into on or after the effective date of this Ordinance pursuant to which a Contract entered into prior to the effective date of this Ordinance is modified or supplemented to: (1) extend the term of the Contract; (2) modify the total amount of money due from the City under the Contract; (3) modify the scope of services to be performed under the Contract; or (4) increase the amount, or change the nature of, goods to be provided under the Contract. The term "Contract Amendment" does not include construction change orders.

(c) "Contractor" shall mean any person or persons, firm, partnership, corporation, or combination thereof, which enters into a Contract with a department head or other employee or officer empowered by law to enter into Contracts on the part of the City.

(d) "Director" shall mean the Director of Administrative Services.

(e) "Participated in the Slave Trade" shall mean: (1) issued slavery insurance policies, including but not limited to policies issued to Slaveholders for damage to or death of Persons Subjected to Slavery, and policies issued to insure business transactions and operations related to the traffic in Persons Subjected to Slavery; (2) purchased, sold or held Persons Subjected to Slavery; (3) provided loans to others to facilitate the purchase, sale, transport, or enslavement of Persons Subjected to Slavery; (4) used Persons Subjected to Slavery as collateral for insurance policies, loans or other transactions; (5) facilitated the traffic in Persons Subjected

Slavery by transporting such persons by boat or rail; or (vi) provided any other services to aid and abet the traffic in Persons Subjected to Slavery.

(f) "Person Subjected to Slavery" shall mean any person who was wholly subject to the will of another, whose person and services were wholly under the control of another, who was in a state of enforced and compulsory service to another, and who was deemed by law to be the property of another during the Slavery Era.

(g) "Predecessor Company" shall mean an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities, were acquired in an uninterrupted chain of succession by the Contractor.

(h) "Profits from the Slave Trade" shall mean any economic advantage or financial benefit derived from the labor of Persons Subjected to Slavery or from Participation in the Slave Trade.

(i) "Slaveholder" shall mean holders of Persons Subjected to Slavery, owners of business enterprises that used the labor of Persons Subjected to Slavery, owners of vessels or other modes of transport that transported Persons Subjected to Slavery, and merchants or financiers dealing in the purchase, sale or other business transactions related to Persons Subjected to Slavery.

(j) "Slavery Era" shall mean that period of time in the United States of America prior to the year "1865." (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

SEC. 12Y.3. EXCEPTIONS.

This Chapter shall not be applicable to the following:

(a) Contracts for: (1) the receipt, administration, management or investment of monies held in trust by the City in the Retirement Fund or the Health Service System Trust Fund; (2) the provision of medical or dental insurance to City employees; (3) the issuance, sale, management or administration of City bonds, notes or lease financings, or other similar obligations, and related credit, liquidity, payment exchange and other agreements; (4) the safeguard, deposit and investment of City funds by the City Treasurer

in accordance with Charter Section 6.106; and (5) the subordination or reorganization of debt held by the City.

(b) Contracts, loans or grant agreements with a federal or state agency, if the application of this Chapter would violate, or be inconsistent with, the terms or conditions of any such grant, loan or contract, or with the instructions or directions of the applicable Federal or State agency.

(c) Contracts for urgent litigation expenses, and agreements entered into pursuant to the settlement of legal proceedings.

(d) Contracts for needed goods or services where the Director finds that such goods or services are available from only one source that is (1) willing to enter into a contract with the City on the terms and conditions established by the City and (2) not currently disqualified from doing business with the City.

(e) Contracts entered into in emergency situations in which it is necessary to immediately procure commodities or services, or to make repairs to safeguard the lives or property of the citizens of the City, or the property of the City, or to maintain public health or welfare as a result of extraordinary conditions created by war, epidemic, natural disaster, or the breakdown of any plant, equipment, or structure in the City.

(f) Contracts for a cumulative amount of \$5,000.00 or less per vendor in each fiscal year. (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

SEC. 12Y.4. SLAVERY ERA DISCLOSURE.

(a) Each Contractor providing: 1) insurance or insurance services; 2) financial services, or 3) textiles to the City, shall complete an affidavit verifying that the Contractor has searched through any and all records in the Contractor's possession or control, including records of any parent or subsidiary entity or Predecessor Company, and has made a good faith effort to search any relevant records that are within the Contractor's knowledge but not within its possession or control, for evidence that the Contractor, its parent

or subsidiary entity, or its Predecessor Company Participated in the Slave Trade or received Profits from the Slave Trade.

(b) Each Contractor described above shall file an affidavit with the Director attesting to the search for relevant records, and stating whether the Contractor located any relevant records. If the Contractor located relevant records, the Contractor shall include in the affidavit: (1) the names of each Person Subjected to Slavery, each Slaveholder, and each person or entity who Participated in the Slave Trade or derived Profits from the Slave Trade, mentioned in the records, (2) a description of the type of transactions, services, or other acts evidenced by the records; and (3) the extent and nature of any Profits from the Slave Trade evidenced by the records.

(c) Information contained in the affidavits shall be subject to public disclosure. The Director, after consultation with the City Attorney, shall, to the extent consistent with local, state, and federal law: (1) provide the affidavits to the public upon request, (2) provide an initial report to the Mayor and the Board of Supervisors, at an open public meeting no later than nine months following the effective date of this Ordinance, setting forth the number of affidavits received in the initial nine-month period, and summarizing the information contained in those affidavits; and (3) continue to provide such reports annually to the Board of Supervisors.

(d) After the effective date of this Ordinance, no new Contract or new Contract Amendment shall be binding upon the City until the Director receives the affidavit described above. (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

SEC. 12Y.5. VOLUNTARY CONTRIBUTIONS TO AMELIORATE THE EFFECTS OF SLAVERY.

(a) The Controller shall establish an account for the collection of voluntary contributions from Contractors subject to this Ordinance, and from any other persons or entities, to be

used to ameliorate the legacy of the Slavery Era on Persons Subjected to Slavery and their descendants.

(b) The Director shall encourage all Contractors subject to this Ordinance to make voluntary contributions to the account.

(c) The Director shall include in the report to the Board of Supervisors required by Section 12Y.4(c)(2), above, the amount of any contributions to the account collected during the first nine months after the effective date of this Ordinance. The Director, after consultation with the San Francisco African American Historical & Cultural Society, shall include in this initial report a recommendation for a method of determining how to expend monies contributed to the account.

(d) The Director shall include a report on contributions to and expenditures from the account in each subsequent annual report required by Section 12Y.4(c)(3) of this Ordinance. (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

SEC. 12Y.6. ENFORCEMENT.

(a) All Contracts shall provide that in the event the Director finds that a Contractor has failed to file an affidavit as required by Section 12Y.4(a), or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages for each Contract in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000.00, whichever is greatest, as determined by the Director. All Contracts shall also contain a provision in which the Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

(b) All Contracts shall require Contractors to maintain records necessary for monitoring their compliance with this Ordinance. (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

SEC. 12Y.7. SEVERABILITY.

In the event that a court or agency of competent jurisdiction holds that federal or state law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Board of Supervisors that the court or agency sever such clause, sentence, paragraph or section so that the remainder of this Chapter shall remain in effect. (Added by Ord. 275-06, File No. 060396, App. 11/17/2006)

CHAPTER 13: JAILS AND PRISONERS

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ARTICLE I: IN GENERAL

Sec. 13.4. Labor by Inmates of County Jail
on Public Works—Authorized.

SEC. 13.4. LABOR BY INMATES OF COUNTY JAIL ON PUBLIC WORKS— AUTHORIZED.

Pursuant to the provisions of the Penal Code of the state, the Sheriff is hereby authorized to require persons committed to the County Jail under a final judgment of imprisonment rendered in a criminal action or proceeding to perform labor on the public works or ways in the City and County. (Ord. No. 7572 (1939), Sec. 1; amended by Ord. 151-00, File No. 000804, App. 6/30/2000)

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ARTICLE II: SHERIFF'S STORES IN COUNTY JAILS

- Sec. 13.8. Establishment Authorized;
Purchase and Sale of Goods
Authorized.
- Sec. 13.12. Keeping of Accounts.
- Sec. 13.13. Rules for Conduct and
Maintenance.

SEC. 13.8. ESTABLISHMENT AUTHORIZED; PURCHASE AND SALE OF GOODS AUTHORIZED.

Pursuant to the authority of Section 4025 of the Penal Code of California, the Sheriff is hereby authorized to establish, maintain and operate a store in each of the County Jails maintained by the City and County, and for such purpose to purchase food, confectionery, tobacco users' supplies, postage, writing materials and toilet articles and supplies out of such funds as may be set aside for such purposes; and to sell such goods, articles and supplies to the prisoners confined in the jail. (Bill No. 872, Ord. No. 7.061(C.S.), Sec. 1)

SEC. 13.12. KEEPING OF ACCOUNTS.

The Controller shall prescribe the manner in which the Sheriff shall keep all accounts showing the transactions of Sheriff's stores, as well as the procedure for and the manner in which reports and accounts regarding the stores shall be rendered to the Controller. (Bill No. 872, Ord. No. 7.061(C.S.), Sec. 5)

SEC. 13.13. RULES FOR CONDUCT AND MAINTENANCE.

The Sheriff shall make and enforce reasonable rules for the conduct and maintenance of the Sheriff's stores. (Bill No. 872, Ord. No. 7.061(C.S.), Sec. 6)

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ARTICLE III: [RESERVED]

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ARTICLE IV: [RESERVED]

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ARTICLE V: WORK FURLOUGH OF COUNTY JAIL PRISONERS

- Sec. 13.60. Work Furlough Program; Findings.
- Sec. 13.61. Work Furlough Administrator.
- Sec. 13.62. Work Furlough Administrator—Agreements.
- Sec. 13.63. Home Detention Program.

SEC. 13.60. WORK FURLOUGH PROGRAM; FINDINGS.

The Board of Supervisors finds on the basis of employment conditions and education conditions, the state of the facilities of the County Jail, and other pertinent circumstances, that the operation of Section 1205 of the Penal Code, known as the "Cobey Work Furlough Law," is feasible in the City and County of San Francisco insofar as it pertains to employment and education. (Amended by Ord. 309-72, App. 10/30/72)

SEC. 13.61. WORK FURLOUGH ADMINISTRATOR.

The Sheriff shall perform the functions of the Work Furlough Administrator. (Amended by Ord. 481-81, App. 9/29/81)

SEC. 13.62. WORK FURLOUGH ADMINISTRATOR—AGREEMENTS.

Pursuant to the provisions of California Penal Code Section 1208.5, the Work Furlough Administrator, as defined in Section 13.61, is authorized to enter into agreements with other counties whereby a person sentenced to, or imprisoned in, the jail of one county, but regularly employed in another county, may be transferred by the sheriff of the county in which such person is confined to the jail of the county in which such person is employed, in order that such person may continue in regular employment in such other county through such county's work furlough program.

The Work Furlough Administrator may enter into such contracts on behalf of the City and County of San Francisco. Any person to be trans-

ferred from another county to San Francisco must meet the standards normally applied to persons selected for work furlough in the City and County of San Francisco. The person to be transferred to San Francisco must either reside in the City and County of San Francisco or be employed in the work furlough area of said City and County, and any person transferred from or to San Francisco agrees to pay all transportation, medical costs and administrative costs associated with such person's participation in the work furlough program either in San Francisco or any other county. (Amended by Ord. 161-80, App. 4/25/80)

SEC. 13.63. HOME DETENTION PROGRAM.

The Sheriff is authorized to offer a Home Detention Program, as specified in Section 1203.016 of the California Penal Code, in which minimum security prisoners and low-risk offenders committed to the County Jail or other County correctional facility or inmates participating in a Work Furlough program may voluntarily participate in a Home Detention Program during their sentence in lieu of confinement in the County Jail or other County correctional facility. (Added by Ord. 252-90, App. 6/29/90)

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ARTICLE VI: [RESERVED]

Sec. 13.70.

(Added by Ord. 300-66, App. 12/27/66; repealed by Ord. 280-03, File No. 031709, App. 12/12/2003)

Sec. 13.71.

(Added by Ord. 300-66, App. 12/27/66; amended by Ord. 368-87, App. 9/22/87; Ord. 151-00, File No. 000804, App. 6/30/2000; repealed by Ord. 280-03, File No. 031709, App. 12/12/2003)

Sec. 13.72.

(Added by Ord. 300-66, App. 12/27/66; repealed by Ord. 280-03, File No. 031709, App. 12/12/2003)

Sec. 13.73.

(Added by Ord. 300-66, App. 12/27/66; repealed by Ord. 280-03, File No. 031709, App. 12/12/2003)

Sec. 13.74.

(Added by Ord. 300-66, App. 12/27/66; repealed by Ord. 280-03, File No. 031709, App. 12/12/2003)

Sec. 13.75.

(Added by Ord. 300-66, App. 12/27/66; repealed by Ord. 280-03, File No. 031709, App. 12/12/2003)

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CHAPTER 14. SAN FRANCISCO HEALTH CARE SECURITY ORDINANCE

- Sec. 14.1. Short Title; Definitions.
- Sec. 14.2. San Francisco Health Access Program and Reimbursement Accounts.
- Sec. 14.3. Required Health Care Expenditures.
- Sec. 14.4. Administration and Enforcement.
- Sec. 14.5. Severability.
- Sec. 14.6. Preemption.
- Sec. 14.7. General Welfare.
- Sec. 14.8. Operative Date.

SEC. 14.1. SHORT TITLE; DEFINITIONS.

(a) **Short title.** This Chapter shall be known and may be cited as the "San Francisco Health Care Security Ordinance."

(b) **Definitions.** For purposes of this Chapter, the following terms shall have the following meanings:

(1) "City" means the City and County of San Francisco.

(2) "Covered employee" means any person who works in the City where such person qualifies as an employee entitled to payment of a minimum wage from an employer under the Minimum Wage Ordinance as provided under Chapter 12R of the San Francisco Administrative Code and has performed work for compensation for his or her employer for ninety (90) days, provided, however, that:

(a) From the effective date of this Chapter through December 31, 2007, "at least twelve (12) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(b) From January 1, 2008 through December 31, 2008, "at least ten (10) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(c) Beginning January 1, 2009, "at least eight (8) hours" shall be substituted for "at least two (2) hours" where such term appears in Section 12R.3(a);

(d) The term "employee" shall not include persons who are managerial, supervisory, or confidential employees, unless such employees earn annually under \$72,450.00 or in 2007 and for subsequent years, the figure as set by the administering agency;

(e) The term "employee" shall not include those persons who are eligible to receive benefits under Medicare or TRICARE/CHAMPUS;

(f) The term "covered employees" shall not include those persons who are "covered employees" as defined in Section 12Q.2.9 of the Health Care Accountability Ordinance, Chapter 12Q of the San Francisco Administrative Code, if the employer meets the requirements set forth in Section 12Q.3 for those employees; and

(g) The term "covered employees" shall not include those persons who are employed by a nonprofit corporation for up to one year as trainees in a bona fide training program consistent with Federal law, which training program enables the trainee to advance into a permanent position, provided that the trainee does not replace, displace, or lower the wage or benefits of any existing position or employee.

(h) Nor shall "covered employees" include those persons whose employers verify that they are receiving health care services through another employer, either as an employee or by virtue of being the spouse, domestic partner, or child of another person; provided that the employer obtains from those persons a voluntary written waiver of the health care expenditure requirements of this Chapter and that such waiver is revocable by those persons at any time.

(3) "Covered employer" means any medium-sized or large business as defined below engaging in business within the City that is required

to obtain a valid San Francisco business registration certificate from the San Francisco Tax Collector's office or, in the case of a nonprofit corporation, an employer for which an average of fifty (50) or more persons per week perform work for compensation during a quarter. Small businesses are not "covered employers" and are exempt from the health care spending requirements under Section 14.3.

(4) "Employer" means an employing unit as defined in Section 135 of the California Unemployment Insurance Code or any person defined in Section 18 of the California Labor Code. "Employer" shall include all members of a "controlled group of corporations" as defined in Section 1563(a) of the United States Internal Revenue Code, and the determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(5) "Health Access Program" means a San Francisco Department of Public Health program to provide health care for uninsured San Francisco residents.

(6) "Health Access Program participant" means any uninsured San Francisco resident, regardless of employment or immigration status or pre-existing condition, who is enrolled by his or her employer or who enrolls as an individual in the Health Access Program under the terms established by the Department of Public Health.

(7) "Health care expenditure" means any amount paid by a covered employer to its covered employees or to a third party on behalf of its covered employees for the purpose of providing health care services for covered employees or reimbursing the cost of such services for its covered employees, including, but not limited to (a) contributions by such employer on behalf of its covered employees to a health savings account as defined under section 223 of the United States Internal Revenue Code or to any other account having substantially the same purpose or effect without regard to whether such contributions qualify for a tax deduction or are excludable from employee income; (b) reimbursement by such covered employer to its covered employees for expenses incurred in the purchase of

health care services; (c) payments by a covered employer to a third party for the purpose of providing health care services for covered employees; (d) costs incurred by a covered employer in the direct delivery of health care services to its covered employees; and (e) payments by a covered employer to the City to be used on behalf of covered employees. The City may use these payments to: (i) fund membership in the Health Access Program for uninsured San Francisco residents; and (ii) establish and maintain reimbursement accounts for covered employees, whether or not those covered employees are San Francisco residents. Notwithstanding any other provision of this subsection, "health care expenditure" shall not include any payment made directly or indirectly for workers' compensation or Medicare benefits.

(8) "Health care expenditure rate" means the amount of health care expenditure that a covered employer shall be required to make for each hour paid for each of its covered employees each quarter. The "health care expenditure rate" shall be computed as follows:

(a) From the effective date of this Chapter through June 30, 2007, \$1.60 per hour for large businesses and \$1.06 per hour for medium-sized businesses;

(b) From July 1, 2007 through December 31, 2007, January 1, 2008 through December 31, 2008, and January 1, 2009 through December 31, 2009, the rates for large and medium-sized businesses shall increase five (5) percent over the expenditure rate calculated for the preceding year;

(c) From January 1, 2010 and each year thereafter, the "health care expenditure rate" shall be determined annually based on the "average contribution" for a full-time employee to the City Health Service System pursuant to Section A8.423 of the San Francisco Charter based on the annual ten county survey amount for the applicable fiscal year, with such average contribution prorated on an hourly basis by dividing the monthly average contribution by one hundred seventy-two (172) (the number of hours worked in a month by a full-time em-

ployee). The "health care expenditure rate" shall be seventy-five percent (75%) of the annual ten county survey amount for the applicable fiscal year for large businesses and fifty percent (50%) for medium-sized businesses.

(9) "Health care services" means medical care, services, or goods that may qualify as tax deductible medical care expenses under Section 213 of the Internal Revenue Code, or medical care, services, or goods having substantially the same purpose or effect as such deductible expenses.

(10) "Hour paid" or "hours paid" means a work hour or work hours for which a person is paid wages or is entitled to be paid wages for work performed within the City, including paid vacation hours and paid sick leave hours, but not exceeding 172 hours in a single month. For salaried persons, "hours paid" shall be calculated based on a 40-hour work week for a full-time employee.

(11) "Large business" means an employer for which an average of one hundred (100) or more persons per week perform work for compensation during a quarter.

(12) "Medium-sized business" means an employer for which an average of between twenty (20) and ninety-nine (99) persons per week perform work for compensation during a quarter.

(13) "Person" means any natural person, corporation, sole proprietorship, partnership, association, joint venture, limited liability company, or other legal entity.

(14) "Required health care expenditure" means the total health care expenditure that a covered employer is required to make every quarter for all its covered employees.

(15) "Small business" means an employer for which an average of fewer than twenty (20) persons per week perform work for compensation during a quarter. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 69-07, File No. 070255, App. 4/2/2007)

SEC. 14.2. SAN FRANCISCO HEALTH ACCESS PROGRAM AND REIMBURSEMENT ACCOUNTS.

(a) The San Francisco Department of Public Health shall administer the Health Access Program. Under the Health Access Program, unin-

sured San Francisco residents may obtain health care from a network consisting of San Francisco General Hospital and the Department of Public Health's clinics, and other community non-profit and private providers that meet the program's quality and other criteria for participation. The Health Access Program is not an insurance plan for Health Access Program participants.

(b) The Department of Public Health shall coordinate with a third party vendor to administer program operations, including basic customer services, enrollment, tracking service utilization, billing, and communication with the participants.

(c) The Health Access Program shall be open to uninsured San Francisco residents, regardless of employment status. Eligibility criteria shall be established by the Department of Public Health, but no person shall be excluded from the Health Access Program based on a pre-existing condition. Participants may enroll themselves as individuals, with the terms of enrollment to be determined pursuant to Section 14.4(a).

(d) The Health Access Program may be funded from a variety of sources, including payments from covered employers pursuant to Section 14.3, from individuals, and from the City. Funding from the City shall prioritize services for low and moderate income persons, with costs based on the Health Access Program participant's ability to pay.

(e) The Health Access Program shall use the "Medical Home" model in which a primary care physician, nurse practitioner, or physician assistant develop and direct a plan of care for each Health Access Program participant, coordinate referrals for testing and specialty services, and monitor management of chronic conditions and diseases. Health Access Program participants shall be assigned to a primary care physician, nurse practitioner, or physician assistant.

(f) The Health Access Program shall provide medical services with an emphasis on wellness, preventive care and innovative service delivery. The Program shall provide medical services for the prevention, diagnosis, and treatment of

medical conditions, excluding vision, dental, infertility, and cosmetic services. The Department of Public Health may further define the services to be provided, except that such services must, at a minimum, include: professional medical services by doctors, nurse practitioners, physician assistants, and other licensed health care providers, including preventive, primary, diagnostic and specialty services; inpatient and outpatient hospital services, including acute inpatient mental health services; diagnostic and laboratory services, including therapeutic radiological services; prescription drugs, excluding drugs for excluded services; home health care; and emergency care provided in San Francisco by contracted providers, including emergency medical transportation if needed.

(g) The Department of Public Health shall also be authorized to use payments made to the City by employers to satisfy their expenditure requirements as set forth in Section 14.3 to establish and maintain reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures.

(h) The City Controller shall ensure any required health care expenditures made by an employer to the City are kept separate and apart from general funds and shall limit use of the expenditures to the Health Access Program or to the establishment and maintenance of reimbursement accounts from which covered employees may obtain reimbursement of health care expenditures. If any covered employee fails to enroll in the Health Access Program or establish a reimbursement account with the Department of Public Health within a reasonable time, as determined by the Department of Public Health, the City may use the funds paid to the City and County of San Francisco on behalf of that employee for the benefit of the health care programs created by this Ordinance, but the City may not transfer these funds to the City's general fund. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 69-07, File No. 070255, App. 4/2/2007)

SEC. 14.3. REQUIRED HEALTH CARE EXPENDITURES.

(a) **Required Expenditures.** Covered employers shall make required health care expenditures to or on behalf of their covered employees each quarter. The required health care expenditure for a covered employer shall be calculated by multiplying the total number of hours paid for each of its covered employees during the quarter (including only hours starting on the first day of the calendar month following ninety (90) calendar days after a covered employee's date of hire) by the applicable health care expenditure rate. In determining whether a covered employer has made its required health care expenditures, payments to or on behalf of a covered employee shall not be considered if they exceed the following amount: the number of hours paid for the covered employee during the quarter multiplied by the applicable health care expenditure rate. The City's Office of Labor Standards Enforcement (OLSE) shall enforce the health expenditure requirements under this Section.

(b) **Additional Employer Responsibilities.** A covered employer shall: (i) maintain accurate records of health care expenditures, required health care expenditures, and proof of such expenditures made each quarter each year, and allow OLSE reasonable access to such records, provided, however, that covered employers shall not be required to maintain such records in any particular form; and (ii) provide information to the OLSE, or the OLSE's designee, on an annual basis containing such other information as OLSE shall require, but OLSE may not require an employer to provide information in violation of State or federal privacy laws. Where an employer does not maintain or retain adequate records documenting the health expenditures made, or does not allow OLSE reasonable access to such records, it shall be presumed that the employer did not make the required health expenditures for the quarter for which records are lacking, absent clear and convincing evidence otherwise. The Office of Treasurer and Tax Collector shall have the authority to provide any and all nonfinancial information to OLSE necessary to fulfill the OLSE's responsibilities as the

enforcing agency under this Ordinance. With regard to all such information provided by the Office of Treasurer and Tax Collector, OLSE shall be subject to the confidentiality provisions of Subsection (a) of Section 6.22-1 of the San Francisco Business and Tax Regulations Code. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 69-07, File No. 070255, App. 4/2/2007)

SEC. 14.4. ADMINISTRATION AND ENFORCEMENT.

(a) The City shall develop and promulgate rules to govern the operation of this Chapter. The regulations shall include specific rules by the Department of Public Health on the operation of both the Health Access Program and the reimbursement accounts identified in Section 14.2(g), including but not limited to eligibility for enrollment in the Health Access Program and establishment of reimbursement accounts and rules by the OLSE for enforcement of the obligations of the employers under this Chapter. The rules shall also establish procedures for covered employers to maintain accurate records of health care expenditures and required health care expenditures and provide a report to the City without requiring any disclosures of information that would violate State or Federal privacy laws. The rules shall further establish procedures for providing employers notice that they may have violated this Chapter, a right to respond to the notice, a procedure for notification of the final determination of a violation, and an appeal procedure before a hearing officer appointed by the City Controller. The sole means of review of the hearing officer's decision shall be by filing in the San Francisco Superior Court a petition for a writ of mandate under Section 1094.5 of the California Code of Civil Procedure. No rules shall be adopted finally until after a public hearing.

(b) During implementation of this Chapter and on an ongoing basis thereafter, the City shall maintain an education and advice program to assist employers with meeting the requirements of this Chapter.

(c) Any employer that reduces the number of employees below the number that would have resulted in the employer being considered a "covered employer," or below the number that would have resulted in the employer being considered a medium-sized or large business, shall demonstrate that such reduction was not done for the purpose of evading the obligations of this Chapter or shall be in violation of the Chapter.

(d) It shall be unlawful for any employer or covered employer to deprive or threaten to deprive any person of employment, take or threaten to take any reprisal or retaliatory action against any person, or directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence any person because such person has cooperated or otherwise participated in an action to enforce, inquire about, or inform others about the requirements of this Chapter. Taking adverse action against a person within ninety (90) days of the person's exercise of rights protected under this Chapter shall raise a rebuttable presumption of having done so in retaliation for the exercise of such rights.

(e) (1) The City shall enforce the obligations of employers and covered employers under this Chapter, and may impose administrative penalties upon employers and covered employers who fail to make required health care expenditures on behalf of their employees. The amount of the penalty shall be up to one-and-one-half times the total expenditures that a covered employer failed to make plus simple annual interest of up to ten (10) percent from the date payment should have been made, but in any event the total penalty for this violation shall not exceed \$1,000.00 for each employee for each week that such expenditures are not made.

(2) For other violations of this Chapter by employers and covered employers, the administrative penalties shall be as follows: For refusing to allow access to records, pursuant to Section 14.3(b), \$25.00 as to each worker whose records are in issue for each day that the violation occurs; for the failure to maintain or retain accurate and adequate records pursuant to Sec-

tion 14.3(b) and for the failure to make the annual report of information required by OLSE pursuant to Section 14.3(b). \$500.00; for violation of Section 14.4(d) (retaliation), \$100.00 as to each person who is the target of the prohibited action for each day that the violation occurs; and for any other violation not specified in this subsection (e)(2), \$25.00 per day for each day that the violation occurs.

(3) The City Attorney may bring a civil action to recover civil penalties for the violations set forth in subsections (e)(1) and (e)(2) in the same amounts set forth in those subsections, and to recover the City's enforcement costs, including attorneys' fees.

(4) Amounts recovered under this Section shall be deposited in the City's General Fund.

(f) The City Controller shall coordinate with the Department of Public Health and OLSE to prepare periodic reports on the implementation of this Chapter including participant rates, any effect on services provided by the Department of Public Health, the cost of providing services to the Health Access Program participants and the economic impact of the Chapter's provisions. Reports shall be provided to the Board of Supervisors on a quarterly basis for quarters beginning July 1, 2007 through June 30, 2008, then every six months through June 30, 2010. Reports shall include specific information on any significant event affecting the implementation of this Chapter and also include recommendations for improvement where needed, in which case the Board of Supervisors or a committee thereof shall hold a hearing within thirty (30) days of receiving the report to consider responsive action.

(g) The Director of Public Health shall convene an advisory Health Access Working Group to provide the Department of Public Health and the Health Access Program with expert consultation and direction, with input on members from the Mayor and the Board of Supervisors. The Health Access Working Group shall be advisory in nature and may provide the Health Access Program with input on matters including: setting membership rates; designing the range of

benefits and health care services for participants; and researching utilization, actuaries, and costs.

(h) The Department of Public Health and the OLSE shall report to the Board of Supervisors by July 1, 2007, on the development of rules for the Health Access Program and for the enforcement and administration of the employer obligations under this Chapter. The Board of Supervisors or a committee thereof shall hold a hearing on the proposed rules to ensure that participants in the Health Access Program shall have access to high quality and culturally competent services. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 69-07, File No. 070255, App. 4/2/2007)

SEC. 14.5. SEVERABILITY.

If any section, subsection, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court or Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. To this end, the provisions of this ordinance shall be deemed severable. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006)

SEC. 14.6. PREEMPTION.

Nothing in this Chapter shall be interpreted or applied so as to create any power, duty or obligation in conflict with, or preempted by, any Federal or State law. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006)

SEC. 14.7. GENERAL WELFARE.

By this Chapter, the City is assuming an undertaking only to promote the general welfare and otherwise satisfy its obligations to provide health care under applicable law. This Chapter should in no way be construed as an expansion of the City's existing obligations to provide health care under State and Federal law, and the City shall set all necessary criteria for enrollment consistent with its legal obligations. The City is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which

it is liable in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the City. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006)

SEC. 14.8. OPERATIVE DATE.

This Chapter shall become operative in three phases. The day this Chapter becomes effective, implementation of the Chapter shall commence. The Health Access Program shall become operative on July 1, 2007. Any requirements on employers for which an average of fifty (50) or more persons per week perform work for compensation during a quarter shall become operative on January 1, 2008. Any requirements on employers for which an average of from twenty (20) to forty-nine (49) persons per week perform work for compensation during a quarter shall become operative on April 1, 2008. This Chapter is intended to have prospective effect only. (Added by Ord. 218-06, File No. 051919, App. 8/4/2006; Ord. 72-07, File No. 070354, App. 4/2/2007)

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CHAPTER 14A: DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

- Sec. 14A.01. Affirming City Policy Against Discrimination in Public Contracting; Temporarily Suspending Chapter 12D.A.
- Sec. 14A.02. Operative Date; Applicability.
- Sec. 14A.03. Reenacting Emergency Ordinance.
- Sec. 14A.04. Enacting Chapter 14A as a Non-Emergency Ordinance.
- Sec. 14A.1. Short Title.
- Sec. 14A.2. Findings.
- Sec. 14A.3. Scope.
- Sec. 14A.4. Definitions.
- Sec. 14A.5. Powers and Duties of the Commission and the Director.
- Sec. 14A.6. Powers and Duties of the Controller.
- Sec. 14A.7. Powers and Duties of the Mayor.
- Sec. 14A.8. Powers and Duties of Contract Awarding Authorities.
- Sec. 14A.9. Powers and Duties of the Office of Contract Administration.
- Sec. 14A.10. Application of Discount.
- Sec. 14A.11. Bonding and Financial Assistance Program.
- Sec. 14A.12. Exceptions and Waivers.
- Sec. 14A.13. Monitoring and Compliance.
- Sec. 14A.14. Subcontracting Program.
- Sec. 14A.15. Reporting and Review.
- Sec. 14A.16. Severability.
- Sec. 14A.17. General Welfare Clause.

Editor's Note:

The provisions of Chapter 14A are temporary and therefore limited in duration. See also the provisions of Chapter 12D.A.

SEC. 14A.01. AFFIRMING CITY POLICY AGAINST DISCRIMINATION IN PUBLIC CONTRACTING; TEMPORARILY SUSPENDING CHAPTER 12D.A.

The City, and every commission, department, officer and employee, shall fully and vigorously enforce all laws prohibiting discrimination and requiring equal opportunity in City contracting. All City contracts require contractors to comply with all such applicable local, state and federal laws. These include but are not limited to the Unruh Civil Rights Act and Section 3303(a)(4) of the San Francisco Police Code, which prohibit contractors from discriminating against subcontractors on any basis prohibited by law. The City shall fully enforce its contractual rights, and shall consider discrimination by a prime contractor against subcontractors on any basis prohibited by law to be a material breach of contract. The City shall vigorously pursue appropriate remedies for any breach by any contractor of such obligations under law or contract to the maximum extent allowed by law.

Effective immediately upon the passage of this ordinance, all provisions of Administrative Code Chapter 12D.A and any other contracting program invalidated by the Superior Court order dated July 26, 2004, in *Coral Construction, Inc. v. City and County of San Francisco* (Sup. Ct. No. 421249) shall be and are suspended and are of no force and effect; provided, however, the provisions of Chapter 12D.A and any other contracting program invalidated by the court order shall be suspended only so long as, and only to the extent that, the City is enjoined by the court from enforcing the provisions of Chapter 12D.A or other similar program. If the injunction is lifted or stayed in its entirety, Chapter 12D.A and any other contracting program previously invalidated by the court order shall automatically become effective and enforceable, and this Chapter 14A shall be suspended for such period

of time during which Chapter 12D.A is operative. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.02. OPERATIVE DATE; APPLICABILITY.

This ordinance shall become effective and operative immediately upon passage, and shall expire on the 61st day following passage unless reenacted as provided by Section 2.107 of the San Francisco Charter.

The provisions of this ordinance are intended to substitute, on a temporary emergency basis, only a DBE program for the MBE and WBE programs that the Superior Court invalidated in its order of July 26, 2004, in *Coral Construction, Inc. v. City and County of San Francisco* (Sup. Ct. No. 421249). When any provision of local law refers to Chapter 12D.A of the Administrative Code or any other contracting program enjoined by the court's order of July 26, 2004, it shall be read as referring instead to Chapter 14A as set forth in this emergency ordinance.

This ordinance shall govern all contracts initiated on or after July 26, 2004 and any Amendment to a Pre-existing Contract as that term is defined in Section 14A.4 and as those contracts are governed by Section 14A.14(k). (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.03. REENACTING EMERGENCY ORDINANCE.

The emergency ordinance enacted by the Board of Supervisors on August 10, 2004, which amended the San Francisco Administrative Code by adding Chapter 14A to establish a Disadvantaged Business Enterprise Program and suspend Chapter 12D.A; adopted a declaration of emergency; made applicable certain emergency contracting procedures; and provided for data collection to ensure nondiscrimination in City contracting, is hereby reenacted as provided under Section 2.107 of the San Francisco Charter.

This ordinance shall become effective and operative immediately upon passage, and shall expire on the 61st day following passage unless

reenacted as provided by Section 2.107 of the San Francisco Charter. (Added by Ord. 247-04, File No. 041172, App. 10-7-04; amended by Ord. 280-04, File No. 041545, App. 12/1/2004; Ord. 22-05, File No. 041740, App. 1/31/2005; Ord. 63-05, File No. 050426, App. 4/1/2005; Ord. 102-05, File No. 050822, App. 6/2/2005; Ord. 202-05, File No. 051286, App. 7/29/2005; Ord. 224-05, File No. 051558, App. 9/28/2005; Ord. 261-05, File No. 051821, App. 11/18/2005; Ord. 23-06, File No. 060074, App. 2/3/2006; Ord. 52-06, File No. 060349, App. 3/30/2006; Ord. 109-06, File No. 060637, App. 5/19/2006)

SEC. 14A.04. ENACTING CHAPTER 14A AS A NON-EMERGENCY ORDINANCE.

(A) This Chapter 14A, which was initially enacted by the Board of Supervisors as an emergency ordinance, is hereby enacted as a non-emergency ordinance. Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to comply with Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or after July 26, 2004 and before September 1, 2006 and any amendment to such contracts; provided, however, that if a competitive solicitation for an agreement to the proposed changes to the contract is required by law, or the law would otherwise require execution of a new contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and not Chapter 14A shall apply.

(B) Any amendment to a contract initiated before July 26, 2004 in which the Contractor agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided, however, that if a competitive solicitation for an agreement to the proposed changes to the contract is required by law, or the law would otherwise require execution of a new contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and not Chapter 12D.A shall apply.

(C) All contracts initiated on or after September 1, 2006 shall be governed by Chapter 14B. (Added Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14A.1. SHORT TITLE.

This ordinance shall be entitled the "Disadvantaged Business Enterprise Ordinance." (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.2. FINDINGS.

1. The Board finds that San Francisco's small businesses drive our economy and form the backbone of our neighborhoods. Small businesses pump hundreds of millions of dollars into San Francisco's economy each year. Through payroll taxes alone, small businesses make a significant contribution to the economic health of our City and the quality of life of its citizens and visitors.

2. Because San Francisco's small businesses experience higher costs, they suffer disadvantage in any competition with big and/or out-of-town businesses. The Board finds that small local businesses are at a competitive disadvantage in competing for work on public contracts, both as prime contractors and as subcontractors.

3. The Board finds that the public has an interest in fostering a strong and vibrant network of small businesses in San Francisco. In part, San Francisco can accomplish this goal by ensuring that small local businesses can compete for public contracts on a level playing field.

4. The Board finds that the disadvantages suffered by small local businesses in competing as prime contractors on public contracts can be reduced by discounting their bids and ratings by ten percent. Granting a ten percent discount does not unduly burden businesses not eligible for such discounts, and is similar to the corrective adjustments given to small local businesses in other jurisdictions. The Board also finds that the disadvantages suffered by small local businesses in competing for subcontracting opportunities on public contracts can be reduced by requiring prime contractors to use good faith efforts to use such businesses as subcontractors. Requiring good faith efforts to use small local businesses does not unduly burden prime contractors or businesses not eligible for such ef-

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forts, and is similar to subcontracting requirements in other jurisdictions. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.3. SCOPE.

The disadvantaged business enterprise ("DBE") bid/ratings discount shall be afforded to economically disadvantaged local businesses certified under Section 14A.5 in the award of all City contracts subject to exceptions hereinafter specifically enumerated in Sections 14A.12 and 14A.19. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.4. DEFINITIONS.

"Amendment to a Pre-existing Contract" shall mean a substantive change to the terms of any contract the term of which has not expired on or before the date that this emergency ordinance takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

"Architect/Engineering Contracts" shall mean an agreement for architects, engineers, and other outside temporary professional design, consultant or construction management services for a public work project.

"Back contracting" shall mean any agreement or other arrangement between a prime contractor and its subcontractor that requires the prime contractor to perform or to secure the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefits of the subcontract. Such agreements or other arrangements include, but are not limited to, situations in which either a prime contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

"Best efforts" when required of contract awarding authority shall mean reasonable efforts to include DBEs in City contracting.

"Bid" shall mean and include a quotation, proposal, solicitation or offer by a bidder or

contractor to perform or provide labor, materials, equipment, supplies or services to the City and County of San Francisco for a price.

"Bidder" shall mean any business that submits a quotation, bid or proposal to provide labor, materials, equipment, supplies or services to the City and County of San Francisco.

"City" shall mean the City and County of San Francisco.

"Commercially useful function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the City. When the City requires and seeks specialty products made to order for the City or otherwise seeks products which, by industry practice, are not regularly stocked in warehouse inventory but instead are purchased directly from the manufacturer, the value of the "commercially useful function" provided by a supplier or distributor shall be valued at no more than five percent of the cost of the product. When the City requires and seeks products which are, by industry practice, stocked in warehouse inventory and are in fact, regularly stocked by the listed supplier or distributor, the value of the "commercially useful function" provided by the supplier or distributor shall not exceed sixty percent of the cost of the product. If the listed supplier or distributor does not regularly stock the required product, the value of the "commercially useful function" provided by the supplier or distributor shall be valued at no more than five percent of the cost of the product.

"Commission" shall mean the Human Rights Commission of the City and County of San Francisco.

"Commodity" shall mean products, including materials, equipment and supplies, purchased by the City.

"Concession" shall mean any privilege conferred by the City on a person to engage in business on property owned or leased by the City.

"Contract" shall mean and include any agreement between the City and a person to provide or procure labor, materials, equipment, supplies or services to, for or on behalf of the City for a price. A "contract" shall include an agreement between the City and a person or nonprofit entity to perform construction-related services or fund the performance of such services. A "contract" does not include: (1) awards made by the City with federal/State grant or City funds to a nonprofit entity where the City offers assistance, guidance, or supervision on a project or program and the recipient of the grant award uses the grant monies to provide services to the community; (2) sales transactions where the City sells its personal or real property; (3) a loan transaction where the City is acting as a debtor or a creditor; (4) lease, franchise, or concession agreements; (5) agreements to use City real property; (6) gifts of materials, equipment, supplies or services to the City; or (7) agreements with a public agency except as provided in Section 14A.8(E).

"Contract awarding authority" shall mean the City officer, department, commission, employee or board authorized to enter into contracts on behalf of the City. In the case of an agreement with a person or nonprofit entity to perform or fund the performance of construction-related services, the term "contract awarding authority" shall mean the person or nonprofit entity receiving funds from the City to perform or fund the performance of such services.

"Contractor" shall mean any person(s), firm, partnership, corporation, or combination thereof, who submits a bid or proposal to perform, performs any part of, agrees with a person to provide services relating to and/or enters into a contract with department heads and officers or contract awarding authorities empowered by law to enter into contracts on the part of the City for public works or improvements to be performed, or for goods or services or supplies to be purchased at the expense of the City or to be paid

out of monies deposited in the treasury or out of trust monies under the control of or collected by the City.

"Control" of a business shall refer to the possession of the legal authority and power to manage business assets, good will and daily operations of the business, and the active and continuous exercise of such authority and power in determining the policies and directing the operations of the business.

"Director" shall mean the Director of the Human Rights Commission of San Francisco.

"Disadvantaged Business Enterprise" ("DBE") shall mean a business that meets all the requirements for, and is certified as, a DBE under Section 14A.5(B) and any duly adopted rules and regulations.

"Discount" shall mean an upward or downward price adjustment, according to the context, that is made pursuant to Section 14A.8.

"Franchise" shall mean and include the right or privilege conferred by grant from the City, or any contracting agency thereof, and vested in and authorizing a person to conduct such business or engage in such activity as is specified in the grant. A "franchise" shall not include an agreement to perform construction-related services.

"General services contract" shall mean an agreement for those services that are not professional services. Examples of "General Services" include: janitorial, security guard, pest control, parking lot management and landscaping services.

"Good-faith efforts" when required of a contract awarding authority or department shall mean the actions undertaken by a department to obtain DBE participation in a contract as prime contractors, and shall include the following efforts: (1) encouraging DBEs to attend prebid meetings scheduled by a department or the Commission to inform potential contractors of contracting opportunities; (2) advertising in general circulation media, trade association publications and local business focused media and posting the contacting opportunity on the Office of Contract Administration's website pursuant to Section

14A.9(3); (3) notifying DBEs that are available to perform the work contemplated in a contract and soliciting their interest in the contract; (4) dividing the contract work into economically feasible units to facilitate DBE participation in the contract; (5) pursuing solicitations of interest by contacting DBEs to determine whether these businesses are interested in participating on the contract; (6) providing DBEs with adequate information about the plan, specifications and requirements of the contract; (7) where applicable, negotiating with DBEs in good faith and demonstrating that DBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capabilities; and (8) using the services of available community and contractors' groups that provide assistance in the recruitment of DBEs for public sector contracts.

"Good-faith efforts" when required of a prime City contractor shall mean the steps undertaken to comply with the goals and requirements imposed by the City for participation by DBEs as subcontractors, and shall include the following:

(1) Attending any presolicitation or prebid meetings scheduled by the City to inform all bidders of DBE program requirements for the project for which the contract will be awarded;

(2) Identifying and selecting specific items of the project for which the contract will be awarded to be performed by DBEs to provide an opportunity for participation by those enterprises;

(3) Advertising for DBEs that are interested in participating in the project, not less than 10 calendar days before the date the bids can first be submitted, in one or more daily or weekly newspapers, trade association publications, trade-oriented publications, trade journals, or other media, specified by the City. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids can first be submitted;

(4) Providing, not less than 10 calendar days prior to the date on which bids can first be submitted, written notice of his or her interest in bidding on the contract to the number of DBEs

required to be notified by the project specifications. The City shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises that are certified by the Director as DBEs;

(5) Following up initial solicitations of interest by contacting potential DBE subcontractors to determine with certainty whether those enterprises were interested in performing specific items of the project;

(6) Providing interested DBEs with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;

(7) Requesting assistance from community organizations; contractor or professional groups; or other organizations that provide assistance in the recruitment and placement of DBEs, if any are available;

(8) Negotiating in good faith with interested DBEs, and not unjustifiably rejecting as unsatisfactory bids or proposals prepared by any DBEs, as determined by the City;

(9) Where applicable, advising and making efforts to assist interested DBEs in obtaining bonds, lines of credit, or insurance required by the City or contractor;

(10) Making efforts to obtain DBE participation that the City could reasonably expect would produce a level of participation sufficient to meet the City's goals and requirements.

"Human Rights Commission (HRC)" shall mean the Human Rights Commission of San Francisco, hereinafter referred to as the "Commission."

"Joint venture" shall mean an association of two or more businesses acting as a contractor and performing or providing services on a contract, in which each joint venture partner combines property, capital, efforts, skill, and/or knowledge and each joint venture partner shares in the ownership, control, management responsibilities, risks and profits of the joint venture in proportion to its claimed level of participation.

"Lease" shall mean and include an agreement by which the City or any contracting agency thereof, grants to a person the temporary possession and use of property for consideration.

"Lower-tier subcontracting" shall mean any agreement or other arrangement between a subcontractor and a person as defined herein where it is agreed that said person shall perform any term, condition or obligation imposed by the subcontract upon the subcontractor.

"Office" or "Offices" shall mean a fixed and established place where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an "office" under the ordinance. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an "office." The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which DBE certification is sought.

"Participation commitment" shall mean the targeted level of DBE subcontractor participation that each prime city contractor has designated in its bid.

"Participation goals" shall mean the targeted levels of City-wide DBE participation in City prime contracts.

"Person" includes one or more individuals, partnerships, associations, organizations, trade or professional associations, corporations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, or any group of persons, including any official, agent or employee of the City.

"Professional services contract" shall mean an agreement for services which require extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of professional service providers in-

clude licensed professionals such as accountants, and non-licensed professionals such as software developers and financial and other consultants, except that services of architects, engineers, and other outside temporary professional design, consultant or construction management services for a public work project shall be considered architect/engineering contracts and shall not be considered professional services contracts for the purpose of this Ordinance.

"Public works/construction contract" shall mean an agreement for the erection, construction, renovation, alteration, improvement, demolition, excavation, installation, or repair of any public building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the City and County of San Francisco, the cost of which is to be paid wholly or partially out of moneys deposited in the treasury of the City and County.

"Services" shall mean Professional Services and General Services.

"Subcontractor" shall mean any business providing goods or services to a contractor for profit, if such goods or services are procured or used in fulfillment of the contractor's obligations arising from a contract with the City.

"Subcontractor participation goals" shall mean the targeted level of DBE subcontractor participation designated by the Director for prime city contracts. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.5. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.

(A) In addition to the duties and powers given to the Human Rights Commission elsewhere, the Commission shall:

1. Levy the same sanctions that a contracting awarding authority may levy as specified in Section 14A.8(A)(7);

2. When necessary, subpoena persons and records, books and documents for a proceeding of the Commission or an investigation by the Director or an audit pursuant to Section 14A.5(E) conducted to further the purposes of this ordinance;

3. Adopt rules and regulations establishing standards and procedures for effectively carrying out this ordinance;

4. Issue forms for the Controller or contract awarding departments to collect information from contractors as prescribed by this ordinance;

5. Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor as specified in Section 14A.13(B), (ii) the Director's denial of an application for or revocation of the certification of a business as a DBE, as specified in Section 14A.5(B), or (iii) the Director's denial of a request to waive or to reduce subcontractor participation goals as specified in Section 14A.14(H);

6. By regulation require contract awarding authorities, departments and the Controller to provide to the Director such information as will be necessary to enable the Director to report to the Mayor and the Board of Supervisors at the end of each fiscal year on the progress each City department has made towards the achievement of DBE participation goals and to perform his/her other duties. The database is a public record available to the public as provided by state and local law;

7. Adopt rules and regulations as deemed necessary by the Director to ensure that the joint venture bid/ratings discount is applied only to joint ventures where the DBE has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the DBE.

8. Consistent with the provisions of the ordinance make such other rules and regulations as are necessary to guide its implementation.

(B) In addition to the duties and powers given to the Director elsewhere, the Director shall have the following duties and powers:

1. Through appropriately promulgated procedures, if any, the Director shall certify businesses as a DBE any business that:

(a) has average gross annual receipts in the three fiscal years immediately preceding its application for certification as a DBE that do not exceed the following limits: (1) public works/construction—\$14,000,000; specialty construc-

tion contractors—\$7,000,000; (2) goods/materials/equipment and general services suppliers—\$7,000,000; (3) professional services and architect/engineering—\$2,500,000; (4) trucking—\$3,500,000; and (5) telecommunications—\$5,000,000. Any business under common ownership, in whole or in part, with any other business(es) shall meet the requirements of this subparagraph only if the aggregate gross annual receipts of all of the businesses under such common ownership do not exceed the limits specified herein. All businesses owned by married spouses or domestic partners shall be considered under common ownership unless the businesses are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate either business.

(b) is an independent and continuing business for profit;

(c) performs a commercially useful function as defined in Section 14A.4;

(d) has fixed offices or distribution points, as defined in Section 14A.4, located within the geographical boundaries of the City where a commercially useful function is performed. Businesses that supply commodities must continuously maintain warehouses stocked with inventory within the geographical boundaries of the City. Truckers must park their registered vehicles and trailers within the geographical boundaries of the City. Post office box numbers or residential addresses shall not suffice to establish a local office;

(e) is listed in the Permits and License Tax Paid File with a San Francisco business street address;

(f) possesses a current Business and Tax Registration Certificate at the time of the application for certification as a DBE;

(g) has been located and doing business in the City for at least six months preceding its application for certification as a DBE;

(h) has business cards for the San Francisco office;

(i) has business stationary for the San Francisco office;

(j) has a written agreement for occupancy of a San Francisco office including documentation of payment of monetary rent (receipts and copies of cancelled checks);

(k) is a listed business in an appropriate business buyers guide such as a telephone yellow pages listing San Francisco based businesses;

(l) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a DBE;

(m) has a conspicuously displayed business sign at the San Francisco business premises, except where the business operates out of a residence; and

(n) has licenses issued to the business owner appropriate for the type of business for which the enterprise seeks certification.

Notwithstanding the criteria in this subsection, no business that is owned in part or in whole by a full time City employee or City officer shall be considered a DBE.

2. Because San Francisco Administrative Code 12D.A required a business to meet all of the criteria listed in 14A.5(B)1 in order to be certified as a Local Business Enterprise ("LBE") under Section 12D.A, and because every business certified as an LBE under Section 12D.A did meet those criteria, the prior LBE certification under San Francisco Administrative Code 12D.A shall constitute a DBE certification under this ordinance, unless the Director determines that any such business no longer meets the criteria set forth for certification in Section 14A.5(B)1. DBE certification under this Subsection shall expire on the date that the LBE certification under Section 12D.A would have expired.

3. The Director shall deem any application for LBE certification under Section 12D.A that is pending on the effective date of this ordinance to be an application for DBE certification under this ordinance.

4. Except where the Director cannot certify a business because the business has not been established in San Francisco for the requisite six months, whenever the Director denies an application for or revokes the certification of a busi-

ness as a DBE because the business is not eligible to be certified as a bona fide DBE, the Director shall, within three working days of his/her decision, notify the aggrieved business in writing of the basis for revocation or denial of certification and the date on which the business will be eligible to reapply for certification. The notice shall be transmitted to the business via certified mail or via facsimile. The Director shall require a business to wait at least six months but not more than two years after the denial or revocation before reapplying to the Director for certification as a DBE. The Director shall provide any business whose certification is revoked an opportunity to be heard within three business days of the revocation. A business may appeal the Director's denial or revocation of certification of a business as a DBE to the Commission. The appeal must be filed with the Commission within three business days following receipt of the Director's decision. Notice by the Director to the business of denial or revocation of certification as a DBE shall apprise the business of its right to appeal the decision;

5. The Director shall have the ultimate responsibility for ensuring that the necessary data is collected and analyzed. Annually, and more often if the Director deems necessary, the Director shall identify areas of contracting where the City or any of its departments are failing to meet DBE participation goals. In addition, the Director shall identify areas of contracting where the City is meeting and/or exceeding participation goals to such an extent that the DBE discounts can no longer be justified. The results of this study shall be included in the Commission's annual report required by Section 14A.15.

6. The Director shall work with the Controller and City departments to implement a City-wide prompt-payment policy requiring that DBEs be paid by the City within 30 days after the date on which the City receives an invoice from a DBE for work performed for the City;

7. The Director shall provide information and other assistance to DBEs to increase their ability to compete effectively for the award of City contracts;

8. The Director shall assist the City to increase participation by DBEs in City contracts;

9. The Director shall continue to develop and to strengthen education and training programs for DBEs and City contract awarding personnel;

10. The Director shall grant waivers as set forth in Sections 14A.12 and 14A.14(E) and (F), and may disqualify a bidder or contractor as set forth in Section 14A.13(B).

(C) The requirements of this ordinance are in addition to those imposed by the United States or the State of California as a condition of financial assistance or otherwise. In contracts which involve the use of any funds furnished, given or loaned by the government of the United States or the State of California, all laws, rules and regulations of the government of the United States or the State of California or of any of its departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this ordinance when such laws, rules or regulations are in conflict. In addition, the Director may authorize the substitution of such State or federal DBE requirements for the requirements of this ordinance whenever such State or federal requirements are substantially the same as those of this ordinance.

(D) The Director, with the approval of the Commission, may enter into cooperative agreements with agencies, public and private, concerned with increasing the use of DBEs in government contracting, subject to the approval of this Board.

(E) The Director, in cooperation with the Controller, shall randomly audit at least three prime contractors each fiscal year in order to insure their compliance with the provisions of this ordinance. The Director, in cooperation with the Controller, shall furthermore randomly audit 10 percent of the joint ventures granted bid discounts in each fiscal year. The Controller shall have the right to audit the books and records of the contractors, joint venture participants, and any and all subcontractors to insure compliance with the provisions of this ordinance.

(F) The powers and duties of the Commission and the Director shall be as set forth in this ordinance, subject to the power to reorganize functions as provided in Section 4.132 of the San Francisco Charter. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.6. POWERS AND DUTIES OF THE CONTROLLER.

(A) In addition to the duties given to the Controller elsewhere, the Controller shall work cooperatively with the Director to provide such contractual encumbrance and payment data as the Director advises are necessary to monitor the participation of DBEs in City prime contracts. If any department refuses or fails to provide the required data to the Controller, the Controller shall immediately notify the Mayor, this Board and the Director.

(B) The Controller shall not certify the award of any contract subject to this ordinance where the Director has notified the Controller that the contract awarding authority has not provided the information the Director advises is necessary under this ordinance.

(C) Each request for payment to a City contractor submitted to the contract awarding authority shall be accompanied by a subcontractor participation form approved by the Commission. That form shall contain information that the Commission has determined is necessary to enable the Commission and the Director (1) to monitor compliance by City departments and their prime contractors with their obligations under this ordinance, (2) to determine whether City departments are achieving their prime and subcontracting goals under this ordinance, and (3) to make such other reports and analyses as are required by this ordinance.

In the event that a request for payment fails to include the information required pursuant to this Section, the contract awarding authority shall, within two working days, notify the Director and the affected prime contractor[s] of the failure and afford each affected prime contractor an opportunity to be heard promptly. That notice shall inform the contractor that the contract

awarding authority has tentatively determined that the information has not been provided, what information is missing and that if this failure is substantiated, then the Controller will be notified to withhold 20 percent of the requested payment until the information is provided. If the Controller finds, after consultation with the Director and the notice and opportunity to be heard, that the information has not been provided, the Controller shall withhold 20 percent of the payment otherwise due until the information is provided.

(D) It is the City's policy that DBEs should be paid by the City within 30 days of the date on which the City receives an invoice for work performed for the City. The Controller shall work with the Director and representatives of City departments to implement this City-wide prompt-payment policy.

(E) The contract awarding authority shall require all prime contractors to submit, within 10 days following payment to the prime contractor of moneys owed for work completed on a project, an affidavit under penalty of perjury, that all subcontractors on the project or job have been paid and the amounts of each of those payments. The name, telephone number and business address of every subcontractor shall be listed on the affidavit. If a prime contractor fails to submit this affidavit, the contract awarding authority shall notify the Director who shall take appropriate action as authorized under Section 14A.13(B) and (F). (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.7. POWERS AND DUTIES OF THE MAYOR.

In addition to the duties given to the Mayor elsewhere, the Mayor shall:

1. By July 1st of each fiscal year, issue notices to all City departments informing them of their duties under this ordinance. The notice shall contain the following information: (1) the City-wide DBE participation goals that departments are expected to use good-faith efforts to attain during the fiscal year and that a department's failure to use good-faith efforts to

attain the DBE participation goals shall be reported to this Board in the Commission's annual report; and (2) the data each department is required to provide the Controller on each contract award;

2. Coordinate and enforce cooperation and compliance by all departments with this ordinance. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.8. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.

(A) Contract awarding authorities shall:

1. Use good-faith efforts as defined in Section 14A.4 for all contracts subject to the bid/ratings discount provisions of this ordinance to solicit and to obtain quotes, bids or proposals from DBEs on all solicitations, or document their unavailability;

2. Unless otherwise indicated in this ordinance, extend the following bid/rating discount to all bids, proposals and contracts from DBEs: (1) five percent to a joint venture with DBE participation that equals or exceeds 35 percent but is under 40 percent; or (2) seven and one-half percent to a joint venture with DBE participation that equals or exceeds 40 percent; (3) ten percent to a DBE or a joint venture among DBEs. Contract awarding authorities shall apply the bid/rating discount to each stage of the selection process, including qualifications, proposals and interviews.

The contract awarding authority shall apply the aforementioned appropriate bid/ratings discount only to a joint venture (1) that meets the requirements contained in this ordinance, and (2) when the DBE is an active partner in the joint venture and performs work, manages the job and takes financial risks in proportion to the required level of participation stated in the bid documents and is responsible for a clearly defined portion of the work to be performed, and shares proportionately in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the DBE joint venture's work shall be set forth in detail separately from the work to be performed by the

nonDBE venture partner. The DBE joint venture's portion of the contract must be assigned a commercially reasonable dollar value;

3. Arrange contracting by size and type of work to be performed so as most effectively to enhance the opportunity for participation by DBEs to the maximum extent feasible. As soon as practical before soliciting quotes, bids or proposals, all contract awarding authorities or in the case of a professional services contract, the department making the contract award recommendation, shall submit all large proposals to the Director for review. The purpose of the Director's review is to determine whether the proposed project can be divided into smaller projects so as to enhance the opportunity for participation by DBEs in the project. For purposes of this subsection, the term "large project" shall mean the following: (1) any public works/construction project estimated to cost more than \$5,000,000; and (2) any professional services contract estimated to cost more than \$100,000. If the Director determines, after consulting with the contract awarding authority or department responsible for the project, that the project can be divided into smaller projects, the contract awarding authority or department shall comply with the Director's determination and issue the solicitation for quotes, bids or proposals in accordance with the Director's determination;

4. Adjust bid bonding and insurance requirements in accordance with the most current version of the City's "Contract Insurance Manual" or as otherwise authorized by the City Risk Manager, Department of Administrative Services;

5. Use the City's Surety Bonding Program set forth in Section 14A.11 to assist DBEs bidding on and performing City public works contracts to meet bonding requirements and/or obtain construction loans;

6. Submit to the Office of Contract Administration (OCA) in electronic format or a format specified by the OCA all bid opportunities, requests for proposals and solicitations for which published notice or advertising is required, no later than 10 calendar days prior to the announce-

ment of the bid opportunity, request for proposal or solicitation. A contract awarding authority must obtain a waiver from its commission, or in the case of a department that has no commission, from the Board of Supervisors, if it cannot meet the requirements of this Section.

7. Impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this ordinance, which shall include, but are not limited to:

- (a) Refuse to award a contract,
- (b) Order the suspension of a contract,
- (c) Order the withholding of funds,
- (d) Order the revision of a contract based upon a material breach of contract provisions pertaining to DBE participation,
- (e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for providing goods or services to the City for a period not to exceed five years, based on the standards set forth in this ordinance and rules and regulations promulgated by the Commission. Any business disqualified under this subsection shall have a right to review and reconsideration by the Commission after two years upon a showing of corrective action indicating that violations are not likely to recur;

8. Not award any contract to a person or business that is disqualified from doing business with the City under the provisions of this ordinance;

9. Designate a staff person to be responsible for responding to the Director and Commission regarding the requirements of this ordinance;

10. Maintain accurate records as required by the Director and the Commission for each contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, the efforts made by a contractor to solicit bids from and award subcontracts to DBEs;

11. Where feasible, provide technical assistance to DBEs to increase their ability to compete effectively for the award of City contracts;

12. Work with the Director and the Controller to implement a City-wide prompt-payment policy requiring that DBEs, be paid by the City within 30 days of the date on which the City receives an invoice from a DBE for work performed for the City;

13. Provide the Director with written notice of all contract amendments, modifications, supplements and change orders that cumulatively result in an increase or decrease of the contract's dollar amount of more than 10 percent. Such notice shall be provided within 10 days of each such contract modification;

14. Whenever contract amendments, modifications, supplements or change orders cumulatively increase the total dollar value of a contract by more than 10 percent, the contract awarding authority shall require compliance with those DBE provisions of this ordinance that applied to the original contract;

15. All contract amendments, modifications, supplements or change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more shall be subject to prior approval of the Director, who shall review the proposed amendment, modification, supplement or change order to correct contracting practices that exclude DBEs from new contracting opportunities.

(B) Contract awarding authorities or departments may invite, encourage or request businesses to joint venture on any contract to promote DBE participation.

(C) For the purpose of determining DBE participation, contracts awarded to joint ventures in which one or more DBEs are combined with one or more businesses that are not DBEs shall be deemed by the contract awarding authority to be awarded to DBEs only to the extent of the DBE participation in the joint venture. DBE participation in the supply of goods shall be included in determining DBE participation in a joint venture if the goods are supplied in accordance with established general industry practice.

(D) Contract awarding authorities shall ensure that all contracts subject to this ordinance include the following requirements, in addition to such other requirements as may be set forth elsewhere:

1. Each bidder, proposer and contractor shall be required to sign an affidavit, declaring under penalty of perjury, attesting to its intention to comply fully with the provisions of this ordinance and attesting to the truth and accuracy of all information provided regarding such compliance;

2. Each contract shall incorporate this ordinance by reference and shall provide that the wilful failure of any bidder or contractor to comply with any of its requirements shall be deemed a material breach of contract;

3. Contracts shall provide that in the event that the Director finds, pursuant to Section 14A.13, that any bidder, subcontractor or contractor wilfully fails to comply with any of the provisions of this ordinance, rules and regulations implementing the ordinance or contract provisions pertaining to DBE participation, the bidder, subcontractor or contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's or contractor's net profit on the contract, 10 percent of the total amount of the contract or \$1,000, whichever is greatest, as determined by the Director pursuant to Section 14A.13(C). All contracts shall also contain a provision in which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder, subcontractor or contractor from any contract with the City;

4. Contracts shall require all contractors to maintain records, including such information requested by the Director or Commission, necessary for monitoring their compliance with this ordinance and shall require prime contractors to include in any subcontract with a DBE provision requiring the subcontractor to maintain the same records;

5. Contracts shall require prime contractors, during the term of the contract, to fulfill the DBE participation commitments submitted with their bids;

6. Contracts shall require prime contractors to include in any subcontract with a DBE a provision requiring the prime contractor to compensate any DBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if the prime contractor fails to comply with its commitment to use the DBE subcontractor as specified in the bid/proposal unless the Commission and the contract awarding authority both give advance approval to the prime contractor to substitute subcontractors or otherwise modify the commitments in the bid/proposal documents. Contracts shall also require prime contractors to compensate any DBE subcontractor for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if the prime contractor does not fulfill its commitment to use the DBE subcontractor as specified in the bid/proposal unless the Commission and the contract awarding authority both give advance approval to the prime contractor to substitute subcontractors or otherwise modify the commitments in the bid/proposal documents. This provision shall also state that it is enforceable in a court of competent jurisdiction;

7. Contracts shall require prime contractors, whenever amendments, modifications, supplements, or change orders cumulatively increase the total dollar value of a construction contract by more than 10 percent, to comply with those DBE provisions of this ordinance that applied to the original contract with respect to the amendment, modification, supplement or change order;

8. Contracts shall require prime contractors to submit to the Director for approval all contract amendments, modifications, supplements, and change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more. The Director shall review the proposed

amendment, modification, supplement or change order to correct any contracting practices that exclude women and minorities from new contracting opportunities;

9. Contracts in which subcontracting is used shall prohibit back contracting to the prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this ordinance, rules and regulations adopted pursuant to this ordinance, or contract provisions pertaining to DBE utilization;

10. Contracts in which subcontracting is used shall require the prime contractor to pay its subcontractors within three working days after receiving payment from the City unless the prime contractor notifies the Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor, in which case the prime contractor may withhold the disputed amount but shall pay the undisputed amount. The Director may, upon making a determination that a bona fide dispute exists between the prime contractor and subcontractor, waive this three day payment requirement. In making the determination as to whether a bona fide dispute exists, the Director shall not consider the merits of the dispute. Contracts in which subcontracting is used shall also require the contractor/consultant, within 10 working days following receipt of payment from the City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each;

11. Contracts shall require contractors and subcontractors to maintain records necessary for monitoring their compliance with this ordinance for three years following completion of the project and shall permit the Commission and Controller to inspect and audit such records.

(E) All contracts or other agreements between the City and persons or entities, public or private, in which such persons or entities receive money from or through the City for the purpose of contracting with businesses to perform public improvements, shall require such persons or

entities to comply with the provisions of this ordinance in awarding and administering such contracts. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.9. POWERS AND DUTIES OF THE OFFICE OF CONTRACT ADMINISTRATION.

In addition to the duties given the Office of Contract Administration elsewhere in this Section, the Office of Contract Administration shall:

1. Maintain, with the assistance of the Director, a current list of DBEs to provide each of those commodities or services subject to this ordinance that the Office of Contract Administration indicates are required by the City;

2. Maintain a central office where all bids, requests for proposals and solicitations will be listed and kept current;

3. Cause to be posted upon a website the following information concerning current bids, requests for proposals and solicitations: the title and number; the name of the contract awarding authority; and the name and telephone number of the person to be contacted for further information. Such information shall be posted with sufficient lead time to provide adequate notice and opportunity to potential City contractors and vendors to participate in the bid opportunity, request for proposals or solicitation, but in no event less than 10 calendar days prior to the due date for such bid opportunity, request for proposals or solicitation.

SEC. 14A.10. APPLICATION OF DISCOUNT.

(A) Contract awarding authorities shall apply a bid/rating discount as follows:

1. **Public Works/Construction Contracts.** Contract awarding authorities shall apply bid discounts as enumerated in Section 14A.8(A) to all public work/construction contracts the estimated cost of which exceeds \$10,000.

2. **Commodities Contracts.** Contract awarding authorities shall apply all bid/rating discounts as enumerated in Section 14A.8(A) to all commodities contracts, the estimated cost of which exceeds \$2,500.

3. **General Services Contracts.** Contract awarding authorities shall apply all bid/rating discounts as enumerated in Section 14A.8(A) to all general services contracts, the estimated cost of which exceeds \$10,000.

4. **Architect/Engineering Contracts.** Contract awarding authorities and architect/engineering selection panels shall apply all bid/rating discounts as enumerated in Section 14A.8(A) to all bids and proposals for architect/engineering contracts, the estimated cost of which exceeds \$10,000.

5. **Professional Services Contracts.** Contract awarding authorities shall apply all bid/rating discounts as enumerated in Section 14A.8(A) to all bids and proposals for all professional service contracts, the estimated cost of which exceeds \$10,000.

(B) **Best Efforts Required For Other Contracts.** All City departments, commissions, boards, officers and employees, in the performance of their duties, and in the award of leases, franchises, concessions, and other contracts not subject to the bid/ratings discounts of this ordinance, shall make best efforts to use the services of DBEs.

(C) The Director is empowered to take actions to ensure compliance with the provisions of this ordinance, including, without limitation, intervening in the selection process, by modifying the criteria used for selecting selection panelists or contractors to correct any practices that hinder equal business opportunities for DBEs. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.11. BONDING AND FINANCIAL ASSISTANCE PROGRAM.

1. **Program Description.** The City and County of San Francisco, acting through its Human Rights Commission ("HRC"), intends to provide guarantees to private bonding companies and financial institutions in order to induce those entities to provide required bonding and financing to eligible contractors and subcontractors bidding on and performing City public work

contracts. This bonding and financial assistance program is subject to the provisions of this Section 14A.11.

2. **Eligible Contracts.** The assistance described in this Section 14A.11 shall be available for any City public works or construction contract to which this ordinance applies.

3. **Eligible Businesses.** Businesses must meet the following criteria to qualify for assistance under this Section 14A.11:

(a) The business may be either a prime contractor or subcontractor; and

(b) The business must be certified by the HRC as DBE according to the requirements of Section 14A5(B).

(c) The business may be required to participate in a "bonding assistance training program" as offered by the HRC, which is anticipated to provide the following:

(i) Bond application assistance,

(ii) Assistance in developing financial statements,

(iii) Assistance in development of a pre-bond surety profile,

(iv) Identification of internal financial control systems,

(v) Development of accurate financial reporting tools, and

4. **Agreements Executed by the Human Rights Commission.** The HRC is hereby authorized to enter into the following agreements in order to implement the bonding and financial assistance program described in this Subsection 14A.11:

(a) With respect to a surety bond, the agreement to guaranty up to 40 percent of the face amount of the bond or \$750,000, whichever is less;

(b) With respect to a construction loan to be made to a contractor or subcontractor, an agreement to guaranty up to 50 percent of the original principal amount of the construction loan or 50 percent of the actual loss suffered by the financial institution as a result of a loan default,

whichever is less; provided that in any event the City's obligations with respect to a guaranty shall not exceed \$750,000;

(c) Any other documents deemed necessary by the HRC to carry out the objectives of this program, provided that such documents shall be subject to review and approval by the City Attorney's Office.

5. **Monitoring and Enforcement.** The HRC shall maintain records on the use and effectiveness of this program, including but not limited to (1) the identities of the businesses and bonding companies participating in this program, (2) the types and dollar amounts of public work contracts for which the program is utilized, and (3) the types and dollar amounts of losses which the City is required to fund under this program. The HRC shall submit written reports to the Board of Supervisors every six months beginning January 1, 2005, advising the Board of the status of this program and its funding capacity, and an analysis of whether this program is proving to be useful and needed.

6. **Funding and Accounts.** Funding for this program may be derived from the following sources:

(a) The Board of Supervisors has appropriated or will appropriate funds for the operation of this program.

(b) Each Department authorized to contract for public works or improvements pursuant to San Francisco Administrative Code Chapter 6 may commit to this program up to ten percent (10%), but not less than one percent (1%), of the budget for every public work or improvement undertaken. (A "public work or improvement" is defined in San Francisco Administrative Code Chapter 6.) This subsection is effective for those public works or improvements where the award of the construction contract (as defined and regulated by Administrative Code Chapter 6) occurs after August 10, 2004.

(c) The Treasurer of the City and County of San Francisco is hereby authorized to negotiate a line(s) of credit or any credit enhancement program(s) or financial products(s) with a finan-

cial institution(s) to provide funding; the program's guaranty pool may serve as collateral for any such line of credit.

In the event the City desires to provide credit enhancement under this Subsection for a period in excess of one fiscal year, the full aggregate amount of the City's obligations under such credit enhancement must be placed in a segregated account encumbered solely by the City's obligations under such credit enhancement.

7. Term of Bonding Assistance Program. The HRC is authorized to enter into the agreements described in this Section for so long as the Controller is able to certify the availability of funds for any new guarantee agreement.

8. Default on Guarantees. The Human Rights Commission shall decertify any contractor that defaults on a loan or bond for which the City has provided a guarantee on the contractor's behalf. However, the Human Rights Commission may in its sole discretion refrain from such decertification upon a finding that the City has contributed to such default. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.12. EXCEPTIONS AND WAIVERS.

(A) The Director shall waive the DBE bid/ratings discounts and good faith efforts requirements of this ordinance under the following circumstances:

1. Whenever the Director finds, with the advice of the contract awarding authority and the Office of Contract Administration, that needed goods or services are available from a sole source that is not currently disqualified from doing business with the City.

2. If the contract awarding authority certifies in writing to the Director, prior to the Controller's contract certification, that (a) the contract is being awarded under emergency circumstances as described and defined in Administrative Code Section 6.60 or Administrative Code Section 21.15 and (b) (i) there is no time to apply bid/ratings discounts or establish subcon-

tracting goals, or (ii) there are no immediately available DBEs that are capable of performing the emergency work.

(B) The Director shall waive the DBE bid/rating discount for contracts in excess of \$5,000,000 whenever a contract awarding authority establishes that:

1. Sufficient qualified DBEs capable of providing the needed goods and services required by the contract are unavailable and sufficient qualified businesses located outside San Francisco capable of providing the needed goods and services required by the contract are available; or

2. The application of the DBE discount will result in significant additional costs to the City if the waiver of the bid discount is not granted.

(C) The bid/ratings discount provisions of this ordinance are not applicable to any contract estimated by the contract awarding authority to cost in excess of \$10,000,000. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.13. MONITORING AND COMPLIANCE.

(A) The Director shall monitor the City's utilization of DBEs in City Contracting. The Director shall issue an exit report for any contract that includes DBE subcontracting participation or DBE prime contract participation as a joint venture partner. The purpose of this exit report is to ensure that prime contractors are complying with their commitments to use DBE subcontractors and DBEs are performing services as set forth in the bid/proposal and contract documents for the joint ventures.

(B) **Noncompliance By Contractors.** In cases in which the Director has cause to believe that a contractor has failed to comply with any of the requirements of this ordinance, rules and regulations adopted pursuant to this ordinance or contract provisions pertaining to DBE participation, the Director shall notify the contract awarding authority and shall attempt to resolve the noncompliance through conference and conciliation. If the noncompliance cannot be resolved, the Director shall conduct an investigation and, where the Director so finds, issue a

written finding of noncompliance. The Director's finding shall indicate whether the contractor acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with requirements of this ordinance, rules and regulations adopted pursuant to this ordinance or contract provisions pertaining to DBE participation. Where the Director finds that the contractor acted in good faith, after affording the contractor notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, after affording the contractor notice and an opportunity to be heard, the Director shall impose sanctions for each violation of the ordinance, rules and regulations adopted pursuant to this ordinance or contract provisions pertaining to DBE participation that may include:

1. Declaring the bidder or contractor nonresponsive and ineligible to receive the award of any pending contract;
2. Declaring the bidder or contractor to be an irresponsible bidder and disqualifying the bidder or contractor from eligibility for providing goods or services to the City for a period of up to five years, with a right of review and reconsideration by the Commission after two years upon a showing of corrective action indicating violations are not likely to recur;
3. If the bidder or contractor is a DBE, revoking that business' certification as a DBE;
4. Determining that the bidder or contractor has wilfully failed to comply with the provisions of this ordinance and, pursuant to the provision in the contract required by Section 14A.8(B)(3) of this ordinance, calculating the liquidated damages for which the bidder or contractor shall be liable. Thereafter the Director shall send a written notice to the Controller, the Mayor and all contract awarding authorities overseeing any contract with the bidder or contractor, that a determination of willful or bad-faith compliance has been made and that all

payments due the bidder or contractor shall be withheld as agreed by the bidder or contractor and the City pursuant to Section 14A.8(B)(3).

(C) The bidder or contractor may appeal the Director's decision to the Commission. The Commission may sustain, reverse or modify the Director's findings and sanctions imposed or take such other action to effectuate the purpose of this ordinance. An appeal by a contractor under this subsection shall not stay the Director's findings.

(D) The Director may require such reports, information and documentation from contractors, subcontractors, bidders, contract awarding authorities, and heads of departments, divisions, and offices of the City as are reasonably necessary to determine compliance with the requirements of this ordinance.

(E) Wilful Noncompliance by Contract Awarding Authority. Whenever the Director finds after investigation that a contract awarding authority has willfully failed to comply with its duties pursuant to Section 14A.8, the Director shall transmit a written finding of noncompliance specifying the nature of the noncompliance, to the contract awarding authority, the Commission, the Mayor and this Board.

The Director shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the finding of noncompliance along with a finding that conciliation was attempted and failed to the Commission and this Board.

The finding of noncompliance shall be communicated to the Mayor for appropriate action to secure compliance pursuant to Section 14A.7.

(F) If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed with the City any materially false or misleading statement or report made in connection with this ordinance, the Director shall report that information to the City Attorney or the District Attorney for appropriate action. The Director shall be empowered to conduct an investigation and for each violation of this Subsec-

tion 14A.13(F), to impose sanctions as set forth in Subsection 14A.13. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.14. SUBCONTRACTING PROGRAM.

(A) For all public works/construction, architect/engineering, professional service, and general service contracts which the contract awarding authority reasonably anticipates will include subcontractor participation, prior to the solicitation of bids or proposals, the contract awarding authority shall provide the Director with a proposed job scope, and may submit written recommendations to the Director regarding DBE subcontractor participation goals to be set for the contract.

(B) Upon receipt of a proposed job scope and/or a written recommendation from a contracting awarding authority pursuant to Section 14A.13(A), the Director shall set the DBE participation goals for each public works/construction, architect/engineering, professional service, and general service contract based upon the following factors:

1. The extent of subcontracting opportunities presented by the contract;
2. The availability of DBE subcontractors capable of providing goods and services on the contract.

(C) The Director shall set these goals within 10 working days of the date the Director receives from a contract awarding authority a proposed job scope and/or written recommendation. If the Director fails to act within 10 days, and the contract awarding authority submitted to the Director recommended goals, the recommended goals shall be deemed approved by the Director, provided the goals are based upon the factors identified above.

(D) All solicitations for bidders on prime public works/construction, architect/engineering, professional service, and general service contracts shall require each bidder to do the following:

1. Demonstrate in its bid that it has used good-faith efforts (as defined in Section 14A.4) to use DBE subcontractors; and

2. Identify the particular DBEs subcontractors to be used in performing the contract, specifying for each the dollar value of the participation, the type of work to be performed and such information as may reasonably be required to determine the responsiveness of the bid.

Except as provided in Section 14A.14, bids not meeting the requirements of Section 14A.14 shall be declared nonresponsive.

(E) A contract awarding authority may request that the Director waive or reduce the DBE subcontractor participation goals by submitting the reasons therefor in writing to the Director prior to the solicitation of bids.

(F) A bidder or contractor may request that the Director waive or reduce the DBE subcontractor participation goals by submitting in writing with its bid to the contract awarding authority the reasons therefor.

(G) The Director may grant the request for waiver or reduction made pursuant to Sections 14A.14(E) and (F) upon a determination that:

1. The reasonable and necessary requirements of the contract render subcontracting or the participation of businesses other than the public works/bidder unfeasible;
2. Qualified DBEs capable of providing the goods or services required by the contract are unavailable, despite the prime contractor's or the department's good-faith efforts to locate DBEs to meet the participation goals; or
3. The available DBEs have given price quotes that exceed competitive levels beyond amounts that can be attributed to the increased costs faced by small local businesses.

(H) Whenever the Director denies a contractor's request to waive or reduce the participation goals, the contractor may appeal that denial to the Commission. The Commission's decision on the request shall be final. In reviewing the Director's denial of a contractor's request to waive or to reduce participation goals, the Commission shall consider the extent of subcontracting opportunities presented by the contract and the availability of DBE subcontractors capable of providing goods and services on the contract. The Commission may overrule, sustain

or modify the Director's decision by applying the same standards that the Director is required to apply, as set forth in Subsection (G) above.

(I) The contract awarding authority shall require bidders or proposers on the contracts to contact DBEs before listing them as subcontractors in the bid or proposal. The contract awarding authority shall declare bids or proposals that fail to satisfy this requirement nonresponsive.

(J) During the term of the contract, any failure to comply with the level of DBE subcontractor participation specified in the contract shall be deemed a material breach of contract.

(K) The provisions of this subsection (K) shall govern any Amendment to a Pre-existing contract as that term is defined in Section 14A.4 for types of contracts enumerated in subsection (A) of this Section. The Contract Awarding authority shall notify the Director of the proposed Amendment to a Pre-existing Contract and the Director shall set the DBE participation goals for the contract based on the factors set forth in subsection (B) of this Section. The Director may grant a request for a waiver or reduction based on the factors set forth in subsection (G) of this Section. The DBE participation goals shall apply when the Contractor hires new subcontractors. The Director or the Commission may adopt regulations governing the application of DBE participation goals under this subsection. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.15. REPORTING AND REVIEW.

(A) **Reporting by the Director.** Commencing October 1, 2004 and no later than the first day of every third month thereafter, the Director shall issue a written report to this Board. That report shall document each City department's performance under the terms of this ordinance, including, among other things, each City department's progress in meeting its DBE goals and the success of each department's prime contractors complying with its best efforts obligations to meet DBE subcontracting goals. That report shall also state whether or not each City

department has fully reported all data required by this ordinance or requested by HRC or the Controller.

1. Whenever the Director's report concludes that a department management's intentional disregard or negligent performance of obligations imposed by this ordinance has contributed to that department's failure to meet its prime contracting goals or the failure of its prime contractors to use their best efforts to meet their subcontracting goals or whenever the Director's report concludes that a City department has failed to provide any data required by this ordinance or requested by the HRC or the Controller, the Clerk of this Board shall schedule before the appropriate committee of the Board a hearing on that report. The Clerk shall also give notice of that hearing to the heads of the departments identified in the report and request the attendance of the heads of those departments at the committee hearing. The Clerk's notice shall inform the department heads that they must be prepared to respond to the Director's finding of intentional disregard and/or negligent performance and to explain what steps they intend to take to forestall repetition of the problems, identified in the Directors' report. The same procedure shall be followed whenever the Director's report identifies any department as having failed to meet its prime or subcontracting goals for three consecutive quarters. If the Director's report indicates that a City department has not met its goals for three consecutive quarters, HRC and the City department shall institute a targeted program to remedy lack of participation by DBEs in any affected industry.

2. The Director shall report to the Commission all waivers acted upon pursuant to Section 14A.12. Such report shall be made on a monthly basis following the granting of the waiver.

(B) **Reporting by the Commission.** By July 1st of each fiscal year subject to this ordinance, the Commission shall submit an annual report to the Mayor and this Board on the progress of the City toward the goals of this ordinance, together with an identification of problems and specific recommendations for: (1) dis-

continuing the DBE bid discounts in those cases where the bid discounts are no longer needed; and (2) improving the City's performance in fostering DBE participation in City Contracting.

(C) This Board shall act upon the Commission's recommendations by the first Board meeting of January in each fiscal year subject to this ordinance.

(D) By the last day of each fiscal year, all contract awarding authorities and City departments shall report annually to the Mayor on their progress in the preceding fiscal year toward the achievement of the DBE participation goals. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.16. SEVERABILITY.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this ordinance, or the validity of its application to other persons or circumstances. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

SEC. 14A.17. GENERAL WELFARE CLAUSE.

In undertaking the enforcement of this ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 208-04, File No. 041117, App. 8/11/2004)

CHAPTER 14B. LOCAL BUSINESS ENTERPRISE AND NON-DISCRIMINATION IN CONTRACTING ORDINANCE

- Sec. 14B.1. Purpose and Findings.
- Sec. 14B.2. Definitions.
- Sec. 14B.3. LBE Certification.
- Sec. 14B.4. Non-Discrimination Certification.
- Sec. 14B.5. PUC-LBE Certification.
- Sec. 14B.6. Non-Profit Certification.
- Sec. 14B.7. Prime Contracts.
- Sec. 14B.8. Subcontracting.
- Sec. 14B.9. Ensuring Non-Discrimination in Subcontracting.
- Sec. 14B.10. Powers and Duties of the Commission and the Director.
- Sec. 14B.11. Powers and Duties of the Controller.
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- Sec. 14B.13. Powers and Duties of Contract Awarding Authorities.
- Sec. 14B.14. Powers and Duties of the Office of Contract Administration.
- Sec. 14B.15. Reporting and Review.
- Sec. 14B.16. Bonding and Other Assistance.
- Sec. 14B.17. Enforcement.
- Sec. 14B.18. Applicability, Operative Date and Transition Provisions.

SEC. 14B.1. PURPOSE AND FINDINGS.

(A) **Short Title.** This ordinance shall be entitled "Local Business Enterprise and Non-Discrimination in Contracting Ordinance."

(B) Findings.

(1) The Board finds that San Francisco's small businesses are a significant sector of the local economy and form the backbone of our neighborhoods. Small businesses contribute hundreds of millions of dollars to San Francisco's economy each year. Through payroll taxes alone,

small businesses make a significant investment in the economic health of our City and the quality of life of its citizens and visitors.

(2) Because San Francisco's small businesses experience higher costs than large businesses or businesses located outside the City, they suffer disadvantage in any competition with those businesses. The Board finds that small local businesses are at a competitive disadvantage in competing for work on public contracts. Because of their size, very small, or "micro," local businesses are at an even greater competitive disadvantage in competing for work on public contracts.

(3) The public has an interest in fostering a strong and vibrant network of small and very small micro businesses in San Francisco. In part, San Francisco can accomplish this goal by ensuring that small and micro local businesses can compete for public contracts on a level playing field.

(4) The Board finds that the disadvantages suffered by very small and micro local businesses in competing as prime contractors on public contracts can be reduced by discounting their bids and ratings by ten percent. Granting a ten percent discount does not unduly burden businesses not eligible for such discounts, and is similar to the corrective adjustments given to small and very small micro businesses in other jurisdictions. The Board finds that the additional disadvantages suffered by micro local businesses can be reduced by setting aside appropriate small contracts for competition only among micro businesses.

(5) San Francisco has a long history of working to end discrimination in all aspects of public contracting. The City must continue to award and administer its public contracts in a manner that is fair and provides equal opportunity to all local businesses, regardless of race, gender or other category protected by law. San Francisco

must ensure that it does not discriminate and does not contract with any business that discriminates on the basis of race, gender or other protected category.

Specifically, this Board initially passed Ordinance No. 139-84 on April 2, 1984 to combat the City and County of San Francisco's own active and passive participation in discrimination against minority- and women-owned businesses, both in its own contracting for goods and services and in the private market for such goods and services. At the time of passage, women- and minority-owned businesses were virtually excluded as contractors on prime City contracts.

Since that time, this Board and the City's Human Rights Commission have actively and extensively documented and studied discrimination against and disadvantages faced by these groups to gauge the effectiveness of the prior Minority, Women and Local Business Enterprise Ordinances (the "M/W/LBE Ordinances") and to assess the need for further and continuing action. The earlier studies are documented in the legislative history of the previous amendments and re-enactments of the ordinance, including Ordinance Nos. 175-89, 155-92, 210-97, 457-97, 82-98, 296-98, 210-99, 283-99 and 134-03. The findings underlying these ordinances have been reviewed and analyzed in the preparation of this Ordinance and are hereby incorporated by reference into the legislative history of this Ordinance. These materials include disparity studies, transcripts of live testimony by dozens of witnesses, case studies of discrimination, and voluminous other materials. An index and a separate synopsis of this material are on file with the Clerk of this Board in File No. 98-0612. These materials are all incorporated by reference into the legislative history of this Ordinance. The collection and analysis of relevant information is ongoing.

On July 26, 2004, in *Coral Construction, Inc. v. City and County of San Francisco* (Sup. Ct. No. 421249), the San Francisco Superior Court enjoined the City from enforcing certain provisions of the M/W/LBE Ordinance. In a subsequent order, the court clarified that the injunction

applied to Sections 12D.A.6, 12D.A.7, 12D.A.8, 12D.A.9, 12D.A.10, 12D.A.14, and 12D.A.17 of the Administrative Code, for all contracts for which bids or proposals are advertised or solicited on or after July 26, 2004. The injunction became effective immediately.

In issuing its injunction, the Superior Court did not dispute the accuracy of the City's disparity studies or otherwise take issue with the City's underlying findings of discrimination and disparity. However, the Court ruled that California's Proposition 209 does not allow the City to address the identified problem through its prior methods. The Board finds and declares that the need for the City to identify, rectify, and prevent discrimination in its public contracting still exists, and the City is committed to ensuring that neither MBEs nor WBEs nor any other business is arbitrarily or unfairly excluded from contracting opportunities. The City remains committed to addressing discrimination in public contracting to the fullest extent allowed by law, in a manner that is consistent with all requirements of Federal and State law.

(C) Purpose.

(1) Assistance to Small Local Businesses.

The City shall assist small and micro local businesses to increase their ability to compete effectively for the award of City contracts. The Mayor shall establish Citywide goals for participation by small and micro local businesses in contracting. The City shall provide the bid discounts, set asides, and subcontracting opportunities set forth in this Ordinance, information and training, and other assistance to small and micro local businesses in order to reach these goals. The Human Rights Commission and Director shall assist other City departments to implement the goal of increasing participation in City contracts by small and micro local businesses.

(2) Nondiscrimination. Neither the City nor any of its officers or employees shall discriminate against any person or business on any basis prohibited by law in the award or administration of City contracts. Persons or businesses that are awarded City contracts shall not discriminate against any person or business on any basis

prohibited by law in the performance or administration of any City contract, including in the selection of subcontractors.

(3) **Human Rights Commission.** The Human Rights Commission shall adopt rules and regulations necessary to carry out this Ordinance. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.2. DEFINITIONS.

"Architect/Engineering Contract" means an agreement for architectural, engineering, or other professional design, consulting or construction management services for a public work/construction project.

"Back contracting" shall mean any agreement or other arrangement between a prime contractor and its subcontractor that requires the prime contractor to perform or to secure the performance of the subcontract in such a fashion and/or under such terms and conditions that the prime contractor enjoys the financial benefits of the subcontract. Such agreements or other arrangements include, but are not limited to, situations in which either a prime contractor or subcontractor agrees that any term, condition or obligation imposed upon the subcontractor by the subcontract shall be performed by or be the responsibility of the prime contractor.

"Bid" means a quotation, proposal, solicitation or offer by a bidder or contractor to perform or provide labor, materials, equipment, supplies or services to the City for a price.

"Bidder" means any business that submits a bid or proposal.

"City" means the City and County of San Francisco.

"Commercially useful function" shall mean that the business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services

are those required and sought by the City. When the City requires and seeks specialty products made to order for the City or otherwise seeks products which, by industry practice, are not regularly stocked in warehouse inventory but instead are purchased directly from the manufacturer, no more than five percent of the cost of the product shall be credited towards LBE participation goals. When the City requires and seeks products which are, by industry practice, stocked in warehouse inventory and are in fact, regularly stocked by the listed supplier or distributor, no more than sixty percent of the cost of the product shall be credited towards LBE participation goals. If the listed supplier or distributor does not regularly stock the required product, no more than five percent of the cost of the product shall be credited towards LBE participation goals.

"Commission" means the Human Rights Commission.

"Commodity contract" means an agreement to purchase any product, including materials, equipment and supplies.

"Contract" means any agreement between the City and a person to provide or procure labor, materials, equipment, supplies, or services to, for, or on behalf of the City for a price to be paid out of monies deposited in the City Treasury or out of trust monies under the control of or collected by the City. A "contract" includes an agreement between a non-profit or public entity and a contractor for the performance of construction or construction-related services, where the contract is funded by the City. A "contract" does not include: (1) grants, whether funded by the City or by Federal or State grant funds, to a nonprofit entity to provide services to the community; (2) sales of the City's personal or real property; (3) loan transactions, whether the City is a debtor or creditor; (4) lease, franchise, or concession agreements; (5) agreements to use City real property; (6) gifts of materials, equipment, supplies or services to the City; or (7) agreements with a public agency except for contracts or other agreements between the City and persons or entities, public or private, in which

such persons or entities receive money from or through the City for the purpose of contracting with businesses to perform public improvements. Without limitation of the foregoing, "contract" includes any agreement between the City and a person to provide or procure labor, materials, equipment, supplies, or services to, for, or on behalf of the City for PUC Regional Projects.

"Contract awarding authority" means any City officer, department, commission, employee or board authorized to enter into contracts on behalf of the City. A non-profit or public entity that receives funds from the City to pay for construction or construction related services is a "contract awarding authority" for the purposes of contracting for the performance of those services.

"Contractor" means any person who enters into a contract with the City.

"Control" means an individual possesses the legal authority to manage business assets, good will and the daily operations of a business, and actively and continuously exercises such authority.

"Director" means the Director of the Human Rights Commission, or his or her designee.

"Discount" means a downward adjustment in price or upward adjustment in rating of a proposal, whichever applies, that is made under Section 14B.7.

"General Manager" means the General Manager of the San Francisco Public Utilities Commission, or his or her designee.

"General services contract" means an agreement for those services that are not professional services. Examples of "general services" include: janitorial, security guard, pest control and landscaping services.

"Joint venture" shall mean an association of two or more professional services or architecture/engineering businesses acting as a contractor and performing or providing services on a professional services or architecture/engineering contract, in which each joint venture partner combines property, capital, efforts, skill, and/or knowledge and each joint venture partner shares

in the ownership, control, management responsibilities, risks and profits of the joint venture in proportion to its claimed level of participation.

"Local Business Enterprise (LBE)" means a business that is certified as an LBE under Section 14B.3. LBEs are either Small-LBEs or Micro-LBEs, and are also either MBEs, WBEs, or OBEs.

"Minimum competitive amount" means for professional services, general services, architect/engineering and commodities contracts, the "minimum competitive amount" as defined in Chapter 6.40(A) of the Administrative Code, which shall be \$29,000 except that on January 1, 2010, and every five years thereafter, the Controller shall recalculate the minimum competitive amount to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1, 2005, rounded to the nearest \$1,000.

"Minority Business Enterprise (MBE)" means a business that is certified as an MBE under Section 14B.4(B)

"Other Business Enterprise (OBE)" means a business that is certified as an OBE under Section 14B.4(D).

"Owns" or "Ownership" means an individual: (a) possesses a record ownership interest, such as partnership interest or stock interest, of at least 51 percent of the business; (b) possesses incidents of ownership, including an interest in profit and loss, equal to at least the required record ownership interest; (c) contributes capital to the business equal to at least the required record ownership percentage (unsecured promissory notes or notes secured by the business or business assets are not sufficient to constitute capital contributions); and (d) contributes expertise relevant to the business "commercially useful function" proportionate to the stated ownership interest.

"Person" means any individual or group of individuals, including but not limited to partnerships, associations, and corporations.

"Professional services contract" means an agreement for services that require extended analysis, the exercise of discretion and independent judgment, or the application of an ad-

vanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of professional service providers include licensed professionals such as accountants, and non-licensed professionals such as parking lot management, software developers and financial consultants. For the purpose of this Ordinance, a contract for architectural, engineering, or other professional design, consulting or construction management services for a public work project shall be considered an architect/engineering contract and not a professional services contract.

"PUC" or "Public Utilities Commission" means the San Francisco Public Utilities Commission, the City Department that provides water, wastewater, and municipal power services to San Francisco and, under contractual agreement with 29 wholesale water agencies, also supplies water to 1.6 million additional customers within three Bay Area counties.

"Public works/construction contract" means a contract for the erection, construction, renovation, alteration, improvement, demolition, excavation, installation, or repair of any public building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility that is performed by or for the City, and the cost of which is to be paid wholly or partially out of moneys deposited in the City Treasury or out of trust monies under the control of or collected by the City. For purposes of this Ordinance only, "public works/construction contract" includes contracts between a person, including a non-profit entity or public agency, and a contractor for construction or construction-related services, where the contract is funded by the City.

"PUC Regional Projects" means the projects to be performed outside of the geographic limits of San Francisco that are identified as regional projects and included in the formally approved Capital Improvement Program of the San Francisco Public Utilities Commission's approximately \$4.3 billion project to seismically reinforce and otherwise enhance the Hetch Hetchy water supply system, as it may be amended from

time to time, and shall also include Repair and Replacement work ("R&R") only where such work is to be performed in association with a regional Capital Improvement Program project.

"Subcontractor" means any person providing goods or services to a contractor or subcontractor in fulfillment of the contractor or subcontractor's obligations arising from a contract with the City.

"Threshold amount" means, for public works/construction projects, the "threshold amount" as defined in Chapter 6.1(L) of the Administrative Code which shall be \$114,000 except that on January 1, 2010, and every five years thereafter, the Controller shall recalculate the threshold amount to reflect any proportional increase in the Urban Regional Consumer Price Index from January 1, 2005, rounded to the nearest \$1,000.

"Woman Business Enterprise (WBE)" means a business that is certified as a WBE under Section 14B.4(C). (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.3. LBE CERTIFICATION.

(A) **Criteria for LBE Certification.** Through appropriately promulgated procedures, if any, the Director shall certify as an LBE any business that meets all of the following criteria and also meet either the criteria set forth in Section 14.B.3(B) or Section 14.B.3(C):

(1) The business is financially and operationally independent from, and operates at arm's length to, any other business.

(2) The business is continuously in operation.

(3) The business is a for-profit enterprise.

(4) The business performs a commercially useful function.

(5) The business maintains its principal place of business in a fixed office within the geographic boundaries of the City that provides all of the services for which LBE certification is sought, other than work required to be performed at a job site; provided, however, that suppliers are not required to maintain their principal place of business in San Francisco, but are required to maintain a fixed office in San Francisco that

meets all of the requirements of this Section other than the principal place of business requirement.

An office is a fixed and established place of business, including a qualified home office, where business is conducted on a regular basis of the type for which certification is sought. A residence qualifies as an office only if none of the persons who own or control the business also maintains an office outside the residence in the same or related field, and the persons who own or control the business claimed a business deduction on the prior year's income tax return, or for, businesses started after the last tax return, would qualify for a deduction on the next tax return. None of the following constitutes an office: a post office box, a temporary location, a movable property, a location that was established to oversee a project such as a construction project office, or work space provided in exchange for services, as opposed to monetary rent.

To establish a principal place of business in San Francisco, a business must demonstrate that the majority of its principals are based in the San Francisco office, and that it pays San Francisco payroll taxes on at least 51% of its total payroll.

Suppliers must maintain a warehouse in the City that is continuously stocked with inventory consistent with their certification. Truckers must park their registered vehicles and trailers within the City.

(6) The business possesses a current San Francisco Business Tax Registration Certificate.

(7) The business has been located and doing business in San Francisco for at least six months preceding the application for certification.

(8) The business owner has licenses or other relevant trade or professional certifications, or, where licensing is not required, relevant training and experience that are appropriate for the type of business for which the business seeks certification.

(9) The business is owned and controlled as defined herein by individuals who reside in the United States or its territories.

(10) The business has average gross annual receipts in the prior three fiscal years that satisfy the criteria set forth in either Section 14B.3(B) or Section 14B.3(C).

(11) The business is not owned or controlled as defined herein in part or in whole by a full time City employee.

(B) **Criteria for Small - LBE.** The Director shall certify as a "Small - LBE" any business that meets the requirements of 14B.3(A) and has average gross annual receipts in the prior three fiscal years that do not exceed the following limits: (1) public works/construction - \$14,000,000; (2) specialty construction contractors - \$7,000,000; (3) goods/materials/equipment and general services - \$7,000,000; (4) professional services and architect/engineering - \$2,500,000; and (5) trucking - \$3,500,000. The City shall determine gross receipts, according to recognized accounting methodologies that the City determines most accurately reflect the actual money that the business received during the relevant period. Any business under common ownership, in whole or in part, with any other business meets the requirements of this subparagraph only if the aggregate gross annual receipts of all of the businesses under such common ownership do not exceed these limits. All businesses owned by married spouses or domestic partners are considered under common ownership unless the businesses are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate either business.

(C) **Criteria for Micro - LBE.** The Director shall certify as a "Micro - LBE" any business that meets the requirements in 14B.3(A) and also has average gross annual receipts in the prior three fiscal years that do not exceed the following limits: (1) public works/construction - \$7,000,000; (2) specialty construction contractors - \$3,500,000; (3) goods/materials/equipment and general services - \$3,500,000; (4) professional services and architect/engineering - \$1,250,000; and (5) trucking - \$1,750,000. Any business under common ownership, in whole or in part, with any other business meets the re-

quirements of this subparagraph only if the aggregate gross annual receipts of all of the businesses under such common ownership do not exceed these limits. All businesses owned by married spouses or domestic partners are considered under common ownership unless the businesses are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate either business. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.4. NON-DISCRIMINATION CERTIFICATION.

(A) For purposes of ensuring non-discrimination in City contracting and subcontracting, and subject to appropriately promulgated procedures, if any, the Director shall further certify Small-LBEs and Micro-LBEs as MBEs, WBEs and OBEs according to the ownership and control of the LBE.

(B) **MBE Certification.** The Director shall certify as an MBE any business that is certified as an LBE and is owned and controlled by one or more minority persons. A minority person is a member of one or more of the following ethnic groups:

(1) African Americans, defined as persons whose ancestry is from any of the Black racial groups of Africa or the Caribbean;

(2) Arab Americans, defined as persons whose ancestry is from an Arabic speaking country that is a current or former member of the League of Arab States;

(3) Asian Americans, defined as persons with Chinese, Japanese, Korean, Pacific Islander, Samoan, Filipino, Asian Indian, and Southeast Asian ancestry;

(4) Iranian Americans, defined as persons whose ancestry is from the country of Iran;

(5) Latino Americans, defined as persons with Mexican, Puerto Rican, Cuban, Central American or South American ancestry. Persons with European Spanish ancestry are not included as Latino Americans; and

(6) Native Americans, defined as any person whose ancestry is from any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(C) **WBE Certification.** The Director shall certify as a WBE any business that is certified as an LBE and is owned and controlled by one or more women.

(D) **OBE Certification.** The Director shall certify as an OBE any business that is certified as an LBE and (i) does not demonstrate to the satisfaction of the Director that it is owned and controlled by one or more women or one or more minority persons or (ii) is not certified as an MBE or a WBE.

(E) **Period of Certification.** The Director may certify LBEs as small-LBEs or Micro-LBEs, and as MBEs, WBEs or OBEs for a period not to exceed three years provided that businesses must at all times throughout the certification period meet the criteria in Section 14B.3 and Section 14B.4 as applicable. The Director may require certified businesses annually to submit documentation for the purpose of verifying continuing eligibility for any certification hereunder. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.5. PUC-LBE CERTIFICATION.

(A) **PUC-LBE Certification.** In order to increase the ability of small businesses that are located within the PUC water system service area but outside of the geographical limits of San Francisco to compete for regional PUC contracts, the Director shall certify businesses as PUC-LBEs, including as either Small-PUC-LBEs or Micro-PUC-LBEs, and as either PUC-MBEs, PUC-WBEs, or PUC-OBEs, that meet all of the following criteria:

(1) Only established small public works/construction, construction material supplies, construction equipment rental and trucking firms may be certified as PUC-LBEs or any subcategory of PUC-LBE.

(2) Only firms located within the PUC water system service area may be certified as PUC-LBEs or any subcategory of PUC-LBE.

(3) Only firms with average gross annual receipts in the prior three fiscal years that meet the requirements of Section 14B.3(B) or Section 14B.3(C) for Small-LBEs or Micro-LBEs, respectively may be certified as PUC-Small-LBEs or PUC-Micro-LBEs.

(4) PUC-LBEs owned and controlled by one or more minority persons or women according to all of the criteria set forth in Section 14B.3(B) or 14B.3(C), respectively, shall be certified as PUC-MBEs or PUC-WBEs. PUC-LBEs that do not demonstrate qualifying ownership and control by minority persons or women shall be certified as PUC-OBEs.

(5) Firms shall meet all criteria that the HRC shall by rule adopt to the end that firms certified as PUC-LBEs shall be similarly situated to LBEs to the extent practicable, taking into account the special circumstances of their location and the needs of the PUC Regional projects.

(B) PUC Small Firm Advisory Committee. There is hereby established a PUC Small Firm Advisory Committee as follows:

(1) The PUC Small Firm Advisory Committee shall have five (5) members who shall be appointed by the PUC General Manager in consultation with the Bay Area Water Supply and Conservation Agency (BAWSCA) to represent the interest of individuals and businesses located within the PUC Water System Service Area but outside of the geographical limits of San Francisco. Members shall serve at the pleasure of the PUC General Manager. Members of the PUC Small Firm Advisory Committee shall not be compensated, but shall be reimbursed for expenses in accordance with the Controller's published policies.

(2) The purposes and duties of the PUC Small Firm Advisory Committee are:

(a) To adopt rules and procedures within the Advisory Committee's responsibilities;

(b) To assist the Director in verifying the eligibility for certification of PUC-LBE applicants by conducting site visits or undertaking other local or regional fact gathering to ensure

that applications for PUC-LBE certification undergo substantially the same scrutiny as applications for other LBE certification;

(c) To outreach to the business community about PUC-LBE certification and contracting opportunities and to provide information to the Director regarding the availability of potential PUC-LBEs;

(d) To receive reports from the City, to publicly discuss, and make recommendations for rules and procedures regarding the implementation of this Ordinance for PUC regional projects to the Director and the PUC;

(e) To make recommendations to HRC to study the feasibility of additional programs that will increase the participation of eligible firms for the regional program;

(f) To provide status reports on the Advisory Committee's activities to the Commission and the General Manager.

(4) The PUC Small Firm Advisory Committee shall establish bylaws, rules and/or regulations for the conduct of its business. Administrative assistance and staffing for the PUC Small Firm Advisory Committee shall be provided in the discretion of the PUC.

(5) Except for the PUC Small Firm Advisory Committee's authority as provided in Section 14B.5.B.2, the Director shall have the authority over the implementation of this Ordinance for PUC Regional Projects to the same extent as all other bids, proposals and contracts subject to the Ordinance. The Director shall consult fully with the PUC to the extent required in the Ordinance.

(C) PUC-LBEs shall have the status of LBEs for all purposes of this Ordinance only for construction, specialty construction, construction material suppliers, construction equipment rental firms and trucking services for PUC Regional Projects. PUC-LBEs shall not have the status of LBEs for PUC contracts for architectural and engineering services, professional services or general services or for any other bid, proposal or contract subject to this Ordinance. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

**SEC. 14B.6. NON-PROFIT
CERTIFICATION.**

(A) Notwithstanding any other provisions of this Ordinance, in order to increase the ability of small, local non-profit enterprises to compete for City contracts on an equal basis with small, local for-profit enterprises, the Director shall certify non-profit enterprises that meet all of the following criteria:

(1) The non-profit enterprise is financially and operationally independent from, and operates at arm's length to, any other non-profit or for-profit enterprise.

(2) The non-profit enterprise is continuously in operation.

(3) The business is a California Nonprofit Organization that is both (a) regulated as either a Nonprofit Public Benefit Corporation under California Corporations Code Sections 5110-6815 or a Nonprofit Religious Corporation under California Corporations Code Sections 9110-9690, and (b) tax-exempt under section 501(c)(3) of the Internal Revenue Code.

(4) The non-profit enterprise performs a commercially useful function. In the case of non-profits, the commercially useful function may be related or unrelated to its stated charitable mission. The tax, or other implications, including forfeiture of tax-exempt status, that a certified non-profit may incur for engaging in substantial business operations unrelated to its charitable mission are solely the responsibility of the non-profit and not a criteria for certification hereunder.

(5) The non-profit enterprise maintains its principal place of business in a fixed office within the geographic boundaries of the City.

An office is a fixed and established place of business, including a qualified home office, where business is conducted on a regular basis of the type for which certification is sought. A residence qualifies as an office only if none of the persons who own or control the business also maintains an office related to a for-profit or non-profit enterprise outside the residence in the same or related field, and the persons who own or control the business claimed a business deduction on the

prior year's income tax return, or for, businesses started after the last tax return, would qualify for a deduction on the next tax return. None of the following constitutes an office: a post office box, a temporary location, a movable property, a location that was established to oversee a project such as a construction project office, or work space provided in exchange for services, as opposed to monetary rent.

To establish a principal place of business in San Francisco, a non-profit enterprise must demonstrate that the majority of its paid and volunteer staff are based in the San Francisco office.

Suppliers must maintain a warehouse in the City that is continuously stocked with inventory consistent with their certification. Truckers must park their registered vehicles and trailers within the City.

(6) The non-profit enterprise has applicable current filings with State and Federal agencies, including the California Attorney General (Form RRF-1), the California Franchise Tax Board (Forms 199 and 109), the California Secretary of State (Form S1-100) and the Internal Revenue Service (Form 990).

(7) The non-profit enterprise has been located and doing the same type of business activity as the type(s) for which certification is sought in San Francisco for at least six months preceding the application for certification.

(8) The non-profit has staff under continuous contractual commitment with licenses or other relevant trade or professional certifications, or, where licensing is not required, relevant training and experience that are appropriate for the type of business for which the non-profit seeks certification.

(9) The Board of Directors or other governing body of the non-profit enterprise consists exclusively of individuals who reside in the United States or its territories.

(10) The non-profit enterprise has average gross annual receipts in the prior three fiscal years that satisfy the criteria set forth in either Section 14B.3(B) or 14B.3(C).

(11) (A) Full time city employees, if any, that serve on the Board of Directors or other governing body of the non-profit enterprise shall not constitute a majority of the membership of such body or be capable of exercising a controlling number of votes for such body and (b) any non-profit that includes any full time City employees on its Board of Directors or other governing body shall be ineligible for award, as a prime contractor or subcontractor, of any contract to be awarded by, and/or overseen by, the City Department or entity that employs such Board or other governing body member.

(B) **Criteria for Small - LBE.** The Director shall certify as a "Small - LBE" any non-profit enterprise that meets the requirements of 14B.6(A) and has average gross annual receipts in the prior three fiscal years that do not exceed the following limits: (1) public works/construction - \$14,000,000; (2) specialty construction contractors - \$7,000,000; (3) goods/materials/equipment and general services - \$7,000,000; (4) professional services and architect/engineering - \$2,500,000; and (5) trucking - \$3,500,000. The City shall determine gross receipts according to recognized accounting methodologies that the City determines most accurately reflect the actual money that the non-profit enterprise received or was entitled to receive during the relevant period. Any non-profit enterprise under common ownership, in whole or in part, with any other for-profit or non-profit enterprise meets the requirements of this subparagraph only if the aggregate gross annual receipts of all of the for-profit and non-profit enterprises under such common ownership do not exceed these limits. All for-profit and non-profit enterprises owned by married spouses or domestic partners are considered under common ownership unless all such enterprises are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate any such enterprise.

(C) **Criteria for Micro - LBE.** The Director shall certify as a "Micro - LBE" any non-profit enterprise that meets the requirements of 14B.6(A) and has average gross annual receipts in the prior three fiscal years that do not exceed the

following limits: (1) public works/construction - \$7,000,000; (2) specialty construction contractors - \$3,500,000; (3) goods/materials/equipment and general services - \$3,500,000; (4) professional services and architect/engineering - \$1,250,000; and (5) trucking - \$1,750,000. The City shall determine gross receipts according to recognized accounting methodologies that the City determines most accurately reflect the actual money that the non-profit enterprise received or was entitled to receive during the relevant period. Gross receipts for non-profits shall include all gifts, grants and other revenues from business activities and investments, according to methodologies that the City determines most accurately reflect the available resources of the non-profit. Any non-profit enterprise under common ownership, in whole or in part, with any other for-profit or non-profit enterprise meets the requirements of this subparagraph only if the aggregate gross annual receipts of all of the for-profit and non-profit enterprises under such common ownership do not exceed these limits. All for-profit and non-profit enterprises owned by married spouses or domestic partners are considered under common ownership unless all such enterprises are in unrelated industries and no community property or other jointly owned assets were used to establish or are used to operate any such enterprise. A non-profit shall be considered affiliated with a for-profit if the parent non-profit seeking certification has an ownership interest in the for-profit subsidiary, whether or not the for-profit subsidiary is engaged in the same charitable mission or business activities as the parent non-profit. A non-profit shall be considered affiliated with another non-profit if the parent non-profit seeking certification has legal control in whole or in part of the non-profit subsidiary whether or not the non-profit subsidiary is engaged in the same charitable mission or business activities as the parent non-profit.

(D) **Certification as OBE.** All non-profit LBEs shall be certified as OBEs. Non-profits shall not be eligible for certification as MBEs or WBEs. Non-profit LBEs shall have the status of

LBEs for all purposes of this Ordinance, including but not limited to bid/ratings discounts and subcontracting participation credit.

(E) **Additional Requirements.** Certification of non-profit LBEs shall be subject to such requirements, if any, that the Director shall by rule adopt, to the end that eligibility requirements for certification for non-profit LBEs shall conform to eligibility requirements for certification for-profit LBEs to the extent practicable taking into consideration the differences in their ownership and operational structures. (Added by Ord. 91-06, File No. 060432, App. 5/12/2006)

SEC. 14B.7. PRIME CONTRACTS.

(A) **Good Faith Efforts to Obtain LBE Bids on Contracts Subject to this Ordinance.** Contract awarding authorities shall use good-faith efforts for all contracts subject to the discount provisions of this Ordinance to solicit and to obtain bids from the broadest possible range of LBEs and to ensure that neither MBEs nor WBEs nor OBEs are arbitrarily excluded from participation. Good faith efforts shall include the following.

(1) Arranging contracts by size and type of work to maximize the opportunities for LBEs to participate. This includes dividing projects into smaller parts.

(a) As soon as practical before soliciting bids or proposals, contract awarding authorities shall submit large contract proposals to the Director for review. The Director shall determine whether the proposed contract can be divided into smaller contracts so as to enhance the opportunity for participation by LBEs. For purposes of this paragraph, "large project" means any public works/construction contract estimated to cost more than \$5,000,000, any professional services contract estimated to cost more than \$100,000, and any multiple year commodities contract with a term greater than one year, including any options to renew or extend.

(b) If the Director determines, after consulting with the contract awarding authority, that the contract can be divided into smaller contracts, then the Director and the contract award-

ing authority shall confer regarding all of the costs and benefits of soliciting the contract as a single contract or dividing it into smaller contracts, including but not limited to the potential for enhanced opportunities for LBE participation as prime contractors, the potential for LBE participation as subcontractors, relative costs, administrative issues, and any other matters relevant to the accomplishment of the purpose of the subject contract or contracts. If, after exchanging information and conferring regarding these issues, the contract awarding authority and the Director are unable to agree on whether or how the contract divided into smaller contracts, or on the size and number of contracts, the Mayor or the Mayor's designee shall resolve the matter.

(2) Encouraging LBEs to attend prebid meetings that are held to inform potential bidders of contracting opportunities.

(3) Advertising in general circulation media, trade association publications and local business media, and posting the contacting opportunity on the Department's website or other centralized City website.

(4) Notifying LBEs that are certified to perform the work contemplated in a contract and soliciting their interest in the contract.

(5) Providing LBEs with adequate information about the plans, specifications and requirements of the contract.

(6) When allowed by local laws governing City contracting, negotiating with LBEs in good faith.

(7) Using the services of community and contractors' groups to assist in the recruitment of LBEs.

(8) For professional services, general services, architectural/engineering and commodities contracts, the estimated cost of which exceeds \$10,000 but is less than the minimum competitive amount or for public works/construction contracts, the estimated cost of which exceeds \$10,000 but is less than the threshold amount, contract awarding authorities are not required to undertake the good faith efforts steps set forth in Sections 14B.7(A)(3) when it is impracticable to do so.

(B) **Best Efforts on Contracts Not Otherwise Subject to this Ordinance.** In the award of leases, franchises, concessions, and other contracts not subject to the discount provisions of this Ordinance, contract awarding authorities shall utilize the good faith efforts steps unless impracticable to do so. At a minimum, contract awarding authorities should notify LBEs that are certified to perform the work contemplated in a contract and solicit their interest in the contract.

(C) **Non-Discrimination in Prime Contracting.** Contract awarding authorities shall ensure that all aspects of the contracting process are free from discrimination against any person on any basis prohibited by law, and ensure broad contracting opportunities for all categories of LBEs. Contract awarding authorities shall maintain such documentation of their selection process as required by the Director to monitor and ensure compliance with this provision.

(D) **Contracts Subject to Prime Bidding Discounts.** Unless otherwise provided in this Ordinance, contract awarding authorities shall apply discounts to all contracts the estimated cost of which exceeds \$10,000.

(E) **Amount of Discount.** Unless otherwise provided in this Ordinance, contract awarding authorities shall apply a 10% discount to any bid from a Small - LBE or Micro - LBE. Contract awarding authorities shall apply these discounts to each stage of the selection process, including qualifications, proposals and interviews.

(F) **Joint Ventures For Professional Services and Architecture/Engineering.** Unless otherwise provided in this Ordinance, contract awarding authorities shall extend the following bid/rating discount to all bids, proposals and contracts from LBEs on professional services and architecture/engineering contracts: (1) five percent to a joint venture with LBE participation that equals or exceeds 35 percent but is under 40 percent; (2) seven and one-half percent to a joint venture with LBE participation that equals or exceeds 40 percent; (3) ten percent to a LBE or a joint venture among LBEs. Contract awarding

authorities shall apply the bid/rating discount to each stage of the selection process, including qualifications, proposals and interviews.

The contract awarding authority shall apply the joint venture bid/ratings discount only to professional services and architecture/engineering contracts and only to a joint venture (1) that meets the requirements contained in this Ordinance, and (2) when the LBE is an active partner in the joint venture, performs work, manages the job and takes financial risks in proportion to the required level of participation stated in the bid documents, is responsible for a clearly defined portion of the work to be performed, and shares proportionately in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially reasonable dollar value.

(G) **Affidavit.** Each bidder, proposer and contractor shall be required to sign an affidavit declaring under penalty of perjury its intention to comply fully with the provisions of this Ordinance and attesting to the truth and accuracy of all information provided regarding such compliance.

(H) **Additional Requirements and Required Contract Terms.** Contract awarding authorities shall include in all contracts with their contractors, and all contractors shall include in their contracts with subcontractors the following requirements, in addition to other requirements set forth in the Municipal Code. For the purposes of this Section, "contractor" includes all subcontractors.

(1) Each contract shall incorporate this Ordinance by reference, shall require contractors to comply with its provisions in awarding and administering such contracts, and shall provide that the willful failure of any bidder or contractor to comply with the requirements of this Ordinance or rules and regulations implementing this Ordinance shall be deemed a material breach of contract.

(2) Contracts shall provide that in the event that the Director finds that any bidder, subcontractor or contractor willfully fails to comply with any of the provisions of this Ordinance, rules and regulations implementing the Ordinance, or contract provisions pertaining to LBE, MBE, WBE, OBE or Micro-LBE participation, outreach, or non-discrimination, the bidder, subcontractor or contractor shall be liable for liquidated damages for each contract in an amount equal to the bidder's or contractor's net profit on the contract, 10 percent of the total amount of the contract or \$1,000, whichever is greatest, as determined by the Director. All contracts shall also contain a provision in which the bidder, subcontractor or contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the bidder, subcontractor or contractor from any contract with the City.

(3) Contracts shall require all contractors to maintain records, including such information requested by the Director or Commission, necessary for monitoring their compliance with this Ordinance. Contracts shall require prime contractors to include in any subcontract with a LBE a provision requiring the subcontractor to maintain the same records. Contracts shall require contractors and subcontractors to maintain such records for three years following completion of the project and shall permit the Director, Commission and Controller to inspect and audit such records.

(4) Contracts shall require prime contractors, during the term of the contract, to fulfill the LBE participation commitments submitted with their bids. Willful failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract.

(5) Contracts shall require, and shall require prime contractors to include in any subcontract with a LBE a provision requiring, the prime contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcon-

tract amount, whichever is greater, if the prime contractor willfully fails to comply with its commitment to use the LBE subcontractor as specified in the bid/proposal unless the Director and the contract awarding authority both give advance approval to the prime contractor to substitute subcontractors or otherwise modify the commitments in the bid/proposal documents. This provision shall also state that it is enforceable in a court of competent jurisdiction.

(6) Contracts shall require prime contractors, whenever amendments, modifications, supplements, or change orders cumulatively increase the total dollar value of the contract by more than 10 percent, to comply with those provisions of this Ordinance that applied to the original contract with respect to the amendment, modification, supplement or change order.

(7) Contracts shall require prime contractors to submit to the Director for approval all contract amendments, modifications, supplements, and change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more. The Director shall review the proposed amendment, modification, supplement or change order to correct any contracting practices that exclude any category of LBEs from new contracting opportunities.

(8) Contracts in which subcontracting is used shall prohibit back contracting to the prime contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of this Ordinance, rules and regulations adopted pursuant to this Ordinance, or contract provisions pertaining to LBE utilization.

(9) Contracts in which subcontracting is used shall require the prime contractor to pay its subcontractors within three working days after receiving payment from the City unless the prime contractor notifies the Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor, in which case the prime contractor may withhold the disputed amount but shall pay the undisputed amount. The Director may, upon making a

determination that a bona fide dispute exists between the prime contractor and subcontractor, waive this three-day payment requirement. In making the determination as to whether a bona fide dispute exists, the Director shall not consider the merits of the dispute. Contracts in which subcontracting is used shall also require the contractor, within 10 working days following receipt of payment from the City, to file an affidavit, under penalty of perjury, that he or she has paid all subcontractors. The affidavit shall provide the names and address of all subcontractors and the amount paid to each.

(I) Exceptions.

(1) The bid discount provisions of this Ordinance are not applicable to any contract estimated by the contract awarding authority to cost in excess of \$10,000,000.

(2) Notwithstanding any other provision of this Section, contract awarding authorities shall not apply a discount where to do so would result in a contract being awarded to a business without the capacity to perform it. The Commission may adopt rules and regulations setting standards for determining that an LBE has sufficient skill, experience, and financial capacity to perform the contract.

(J) Waivers. The Director shall waive the LBE bid discounts, and report the waiver to the Commission, if:

(1) The Director finds, with the advice of the contract awarding authority and the Office of Contract Administration, that needed goods or services are available from a sole source that is qualified to do business with the City;

(2) The contract awarding authority certifies in writing to the Director, prior to the Controller's contract certification, that the contract is being awarded under the emergency provisions of Administrative Code Section 6.60 or Administrative Code Section 21.15 and that there is either (i) no time to apply bid discounts or establish subcontracting goals, or (ii) no immediately available LBEs that are capable of performing the emergency work; or

(3) For contracts in excess of \$5,000,000, a contract awarding authority establishes that sufficient qualified LBEs capable of providing the needed goods and services required by the contract are not available, or the application of the LBE discount will result in significant additional costs to the City if the waiver of the bid discount is not granted.

(K) Pilot Set-Aside Program. The Director may set aside for competitive award to Micro - LBEs any of the following contracts:

(1) Public work/construction contracts where the contract amount is equal to or less than \$250,000;

(2) Contracts other than public work/construction contracts where the contract amount is equal to or less than \$100,000.

(3) The competitive award requirements of the Municipal Code shall otherwise apply to contracts in the set-aside program, except that if (a) fewer than two Micro - LBEs submit bids, or (b) the contract awarding authority determines that the contract would not be awarded at a fair market price, then the contract awarding authority may reject all bids and remove the contract from the set-aside program.

(4) The Director shall have a goal of setting aside in each fiscal year 25% of all contracts that are eligible to be set aside in each fiscal year.

(5) Contracts that are set-aside for award to Micro - LBEs shall not be subject to subcontracting goals under Section 14B.8. Micro - LBEs that subcontract any portion of a set-aside contract should subcontract to businesses certified as Micro - LBEs, to the maximum extent possible. Micro - LBEs that subcontract any portion of a set-aside contract must serve a commercially useful function based on the contract's scope of work, and must perform at least 50% of the contract work.

(L) Prompt payment. The City shall pay LBEs within 30 days of the date on which the City receives an invoice for work performed for and accepted by the City. The Controller shall work with the Director and contract awarding authorities to implement this Citywide prompt-payment policy. The City shall consult with af-

affected community members and relevant City officials, including the Director, the Controller, and contract awarding authorities, to design and implement a prompt payment program within six (6) months of the effective date of this Ordinance. Such program shall include procedures for the payment of late penalties where prompt payment does not occur. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.8. SUBCONTRACTING.

(A) **LBE Participation Goals.** Prior to soliciting bids or proposals, contract awarding authorities shall provide the Director with a proposed job scope for all public work/construction, and for all architect/engineering, professional service and general service contracts that exceed the minimum competitive amount. The contract awarding authority may ask the Director to waive subcontracting goals where it anticipates that there are no subcontracting opportunities or there are not sufficient LBEs available to perform the subcontracting work available on the contract.

The Director shall set LBE participation goals for each such contract, where appropriate, based on the following factors:

- (1) The extent of subcontracting opportunities presented by the contract; and
- (2) The availability of LBE subcontractors capable of providing goods and services on the contract.

(B) Bids that do not meet the LBE participation goal set under 14B.8(A) will be rejected as non-responsive unless the Director finds that the bidder diligently undertook all the good faith efforts required by this Ordinance and that the failure to meet the goal resulted from an excusable error. The contract awarding authority shall require bidders or proposers on the contracts to contact a LBE before listing that LBE as a subcontractor in the bid or proposal. A bid that fails to comply with this requirement will be rejected as non-responsive. In addition only LBEs that have been contacted and agreed to be listed as subcontractors shall be credited toward meeting the LBE participation goal.

(C) **Good Faith Outreach.** All bidders shall undertake good faith outreach as set forth in this Section 14B.8(C) to select subcontractors to meet LBE goals, except that bidders on public works/construction contracts for less than the threshold amount are not required to undertake the good faith efforts steps set forth in Sections 14B.8(C)(3) when it is impracticable to do so. Bids from bidders who fail to undertake the required good faith outreach steps and/or who fail to submit the documentation of good faith outreach required in Section 14B.8(D) shall be declared nonresponsive:

- (1) Attending any presolicitation or prebid meetings scheduled by the City to inform all bidders of LBE program requirements for the project for which the contract is awarded;
- (2) Identifying and selecting subcontracting opportunities to meet LBE goals;
- (3) Advertising for LBE subcontractors by posting the opportunity in an accessible location, specified by the City, not less than 10 calendar days before the date the bids can first be submitted. This paragraph applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the bids can first be submitted;
- (4) Contacting LBEs certified to perform the identified work;
- (5) Providing LBEs that have notified the bidder of their interest with adequate information about the plans, specifications, and requirements for the work, provided that the Director may cap the number of contacts required;
- (6) Negotiating in good faith with LBEs, and not unjustifiably rejecting their bids or proposals; and
- (7) Advising and assisting interested LBEs to obtain bonds, lines of credit, or insurance required by the City or the bidder.

(D) Each bid shall document good faith outreach and include the documentation with the bid. Such documentation shall include: (a) the dollar amount of each subcontract and a statement of the scope of work to be performed under the subcontract; (b) the identification of each subcontract awarded to an LBE and, (c) for each

subcontract, copies of the subcontractor bids submitted. Such documentation shall contain at least the bid amount and a description of the scope of work. If no written bids were submitted by some or all of the subcontractors who bid the job, the bidder shall submit a written statement containing (i) the amount of each oral bid; and (ii) separately, for each subcontract, a full and complete statement of the reason(s) for selection of the subcontractor. If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the respective dollar amounts bid, the statement must state the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the bids. Bidders also shall maintain the documentation described in this paragraph for three years following submission of the bid or completion of the contract, whichever is later. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.9. ENSURING NON-DISCRIMINATION IN SUBCONTRACTING.

(A) **Prohibition on Discrimination.** A bidder may not discriminate in its selection of subcontractors against any person on the basis of race, gender, or any other basis prohibited by law.

(B) **Availability Data.** In order to prevent unlawful discrimination in the selection of subcontractors, and to identify and correct unlawful practices, the City will monitor the administration of City contracts, including the selection of subcontractors, as provided in this Section. For public work/construction, architect/engineering, professional service, and general service contracts which the contract awarding authority reasonably anticipates will include subcontractor participation, prior to the solicitation of bids or proposals, the Director shall assemble data regarding the availability of MBEs, WBEs and OBEs to provide work that is likely to be subcontracted. The Director, in the Director's sole discretion, shall determine the appropriate methodology.

(C) **Requirements for Solicitations.** In all solicitations of public work/construction, architect/engineering, professional service, and general service contracts which the contract awarding authority reasonably anticipates will include subcontractor participation, the contract awarding authority shall include the availability data described above. Bidders shall undertake all required good faith efforts outreach steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs are unfairly or arbitrarily excluded from the required outreach.

(D) **Review of Bid.** The Director may review or investigate any bid, including the selection of the bidder's subcontractors, to determine whether discrimination may have occurred. The Director shall review bids, during the bid protest period, to determine whether: (1) a potential subcontractor or other person has filed a complaint of discrimination; (2) there is a significant difference between the percentages of MBEs, WBEs, or OBEs available to provide goods and services as subcontractors on the contract and the percentages of the bidder's subcontractors who are MBEs, WBEs, or OBEs; or (3) other facts and circumstances suggest that further inquiry is warranted. The Director, in the Director's sole discretion, shall determine whether and when to investigate further the conduct of a bidder or contractor. Investigations will be conducted under the procedures in Section 14B.17. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.10. POWERS AND DUTIES OF THE COMMISSION AND THE DIRECTOR.

(A) **Human Rights Commission.** In addition to the duties and powers given to the Human Rights Commission elsewhere, the Commission shall:

(1) When necessary, subpoena persons and records, books and documents for a proceeding of the Commission or an investigation by the Director or an audit pursuant to Section 14B.10(B)(5) conducted to further the purposes of this Ordinance.

(2) Adopt rules and regulations establishing standards and procedures for effectively carrying out this Ordinance.

(3) Issue forms for the Controller or contract awarding departments to collect information from contractors as prescribed by this Ordinance.

(4) Hear appeals challenging: (i) the Director's disqualification of a bidder or Contractor, (ii) the Director's denial of an application for or revocation of the certification of a business as a Small- LBE, Micro-LBE, MBE, WBE, or OBE or (iii) the Director's denial of a request to waive or to reduce subcontractor participation goals.

(5) By regulation require contract awarding authorities, departments and the Controller to provide to the Director such information as will be necessary to enable the Director to report to the Mayor and the Board of Supervisors at the end of each fiscal year on the progress each City department has made towards the achievement of LBE participation goals and towards the goal of ensuring against discrimination and exclusion of MBEs, WBEs, or OBEs, and to perform his/her other duties. The database is a public record available to the public as provided by state and local law.

(6) Adopt rules and regulations as deemed necessary by the Director to ensure that the joint venture bid/rating discount is applied only to joint ventures where the LBE has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the LBE.

(B) **HRC Director.** In addition to the duties and powers given to the HRC Director elsewhere, the Director shall:

(1) Levy the same sanctions that a contracting awarding authority may levy as specified in Section 14B.17.

(2) Ensure that the necessary data is collected and analyzed. Annually, and more often if the Director deems necessary, the Director shall identify areas of contracting where the City or any of its departments are failing to meet LBE participation goals or are contracting with MBEs, WBEs, or OBEs at rates less than would be

expected in the absence of discrimination. The results of this study shall be included in the Commission's annual report required by Section 14B.15(B).

(3) Provide information and other assistance to LBEs to increase their ability to compete effectively for the award of City contracts.

(4) Grant waivers as set forth in Sections 14B.7(J) and 14B.8(A), and disqualify a bidder or contractor as set forth in Section 14B.17.

(5) In cooperation with the Controller, randomly audit at least three prime contractors each fiscal year in order to insure their compliance with the provisions of this Ordinance. The Director, in cooperation with the Controller, shall furthermore randomly audit 10 percent of the joint ventures granted bid discounts in each fiscal year. The Controller shall have the right to audit the books and records of the contractors, joint venture participants, and any and all subcontractors to insure compliance with the provisions of this Ordinance.

(6) Take actions to ensure compliance with the provisions of this Ordinance, including, without limitation, intervening in the selection process, by modifying the criteria used for selecting selection panelists or contractors to correct any practices that hinder equal business opportunities for LBEs or Micro-LBEs, and for MBEs, WBEs, and OBEs. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.11. POWERS AND DUTIES OF THE CONTROLLER.

(A) In addition to the duties given to the Controller elsewhere, the Controller shall work cooperatively with the Director to provide such contractual encumbrance and payment data as the Director advises are necessary to monitor the participation of Small - LBEs, Micro - LBEs, MBEs, WBEs, and OBEs in City prime contracts. If any department refuses or fails to provide the required data to the Controller, the Controller shall immediately notify the Mayor, this Board and the Director.

(B) The Controller shall not certify the award of any contract subject to this Ordinance where the Director has notified the Controller that the contract awarding authority has not provided the information the Director advises is necessary under this Ordinance.

(C) Each request for payment to a City contractor submitted to the contract awarding authority shall be accompanied by a subcontractor participation form approved by the Commission. That form shall contain information that the Commission has determined is necessary to enable the Commission and the Director (1) to monitor compliance by City departments and their prime contractors with their obligations under this Ordinance (2) to determine whether City departments are achieving their prime and subcontracting goals under this Ordinance, and (3) to make such other reports and analyses as are required by this Ordinance.

In the event that a request for payment fails to include the information required pursuant to this Section, the contract awarding authority shall, within two working days, notify the Director and the affected prime contractor[s] of the failure and afford each affected prime contractor an opportunity to be heard promptly. That notice shall inform the contractor that the contract awarding authority has tentatively determined that the information has not been provided, what information is missing and that if this failure is substantiated, then the Controller will be notified to withhold 20 percent of the requested payment until the information is provided. If the Controller finds, after consultation with the Director and notice and opportunity to be heard, that the information has not been provided, the Controller shall withhold 20 percent of the payment otherwise due until the information is provided.

(D) The contract awarding authority shall require all prime contractors to submit, within 10 days following payment to the prime contractor of moneys owed for work completed on a project, an affidavit under penalty of perjury, that all subcontractors on the project or job have been paid and the amounts of each of those

payments. The name, telephone number and business address of every subcontractor shall be listed on the affidavit. If a prime contractor fails to submit this affidavit, the contract awarding authority shall notify the Director who shall take appropriate action as authorized under Section 14B.17. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.12. POWERS AND DUTIES OF THE MAYOR.

In addition to the duties given to the Mayor elsewhere, the Mayor shall:

(A) By July 1st of each fiscal year, issue notices to all City departments informing them of their duties under this Ordinance. The notice shall contain the following information: (1) the City-wide LBE goals that departments are expected to use good-faith efforts to attain during the fiscal year and that a department's failure to use good-faith efforts to attain the participation goals shall be reported to this Board in the Commission's annual report; (2) the availability of MBEs, WBEs, and OBEs to perform City contracting and that departments are expected to take all steps necessary to ensure against illegal or arbitrary discrimination or exclusion of any certified business; and (3) the data each department is required to provide the Controller on each contract award.

(B) Coordinate and enforce cooperation and compliance by all Departments with this Ordinance.

(C) Designate a liaison to the Human Rights Commission to facilitate communication and compliance with this Ordinance. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.13. POWERS AND DUTIES OF CONTRACT AWARDING AUTHORITIES.

(A) In addition to the powers and duties given to contract awarding authorities elsewhere, contract awarding authorities shall:

(1) Adjust bid bonding and insurance requirements in accordance with the most current version of the City's "Contract Insurance Manual"

or as otherwise authorized by the City Risk Manager, Department of Administrative Services.

(2) Use the City's Surety Bonding Program set forth in Section 14B.17 to assist LBEs bidding on and performing City public works/construction contracts to meet bonding requirements and/or obtain construction loans.

(3) Submit to the Office of Contract Administration (OCA) in electronic format or a format specified by the OCA, all bid opportunities, requests for proposals and solicitations for which published notice or advertising is required, no later than 10 calendar days prior to the due date of the bid opportunity, request for proposals or solicitation. A contract awarding authority must obtain a waiver from its commission, or in the case of a department that has no commission, from the Board of Supervisors, if it cannot meet the requirements of this Section.

(4) Impose such sanctions or take such other actions as are designed to ensure compliance with the provisions of this Ordinance, which shall include, but are not limited to:

- (a) Refuse to award a contract.
- (b) Order the suspension of a contract.
- (c) Order the withholding of funds.

(d) Order the revision of a contract based upon a material breach of contract provisions pertaining to LBE participation or outreach to MBEs, WBEs, or OBEs.

(e) Disqualify a bidder, contractor, subcontractor, or other business from eligibility for providing goods or services to the City for a period not to exceed five years, based on the standards set forth in this Ordinance and rules and regulations promulgated by the Commission. Any business disqualified under this subsection shall have a right to review and reconsideration by the Commission after two years upon a showing of corrective action indicating that violations are not likely to recur.

(5) Not award any contract to a person or business that is disqualified from doing business with the City under the provisions of this Ordinance.

(6) Designate a staff person to be responsible for responding to the Director and Commission regarding the requirements of this Ordinance.

(7) Maintain accurate records as required by the Director and the Commission for each contract awarded, its dollar value, the nature of the goods or services to be provided, the name of the contractor awarded the contract, its identity as a Small-LBE, Micro - LBE, MBE, WBE or OBE, the efforts made by the contract awarding authority to solicit bids from LBEs, including Micro - LBEs, MBEs, WBEs and OBEs, responses received from such businesses, and a full and complete statement of the reason(s) for selection of the contractor addressing the particular qualifications at issue.

(8) Where feasible, provide technical assistance to LBEs to increase their ability to compete effectively for the award of City contracts.

(9) Work with the Director and the Controller to implement a City-wide prompt-payment policy requiring that LBEs be paid by the City within 30 days of the date on which the City receives an invoice from a LBE for work performed for the City.

(10) Provide the Director with written notice of all contract amendments, modifications, supplements and change orders that cumulatively result in an increase or decrease of the contract's dollar amount of more than 10 percent. Such notice shall be provided within 10 days of each such contract modification.

(11) Whenever contract amendments, modifications, supplements or change orders cumulatively increase the total dollar value of a contract by more than 10 percent, the contract awarding authority shall require compliance with those provisions of this Ordinance that applied to the original contract.

(12) All contract amendments, modifications, supplements or change orders that cumulatively increase by more than 20 percent the total dollar value of all contracts originally valued at \$50,000 or more shall be subject to prior approval of the Director, who shall review the proposed amendment, modification, supplement

or change order to correct contracting practices that exclude Small-LBEs or Micro - LBEs from new contracting opportunities or discriminate against MBEs, WBEs or OBEs.

(B) Contract awarding authorities or departments may invite, encourage or request businesses to joint venture on any professional services or architecture/engineering contract to promote LBE participation.

(C) For the purpose of determining LBE participation, contracts awarded to joint ventures in which one or more LBEs are combined with one or more business that are not LBEs shall be deemed by the contract awarding authority to be awarded to LBEs only to the extent of the LBE participation in the joint venture.

(D) Subject to the budgetary and fiscal provisions of the San Francisco Charter and to any limitations or requirements associated with the issuance of municipal financings, including but not limited to the use of tax-exempt financing and other long-term obligations, contract awarding authorities shall set aside the following percentage of the value of each contract, as defined in Section 14B.2, to fund the administration and enforcement of this Chapter 14B by the HRC. Such funds shall be used solely for the actual costs of administering and enforcing this Chapter. The HRC shall provide monthly statements to contract awarding authorities and the Controller's Office that account for all expenditures related to administering and enforcing this Chapter, broken down by staff member, project, and activity. Any funds that are not expended on the actual costs of administration and enforcement relating to the subject contract shall be returned to the source fund as soon as practicable. This Section 14B.13(D) shall not apply to contracts that are funded by bonds that were authorized prior to the effective date of this Ordinance.

(1) For contracts having an estimated value under \$1 million, the contract awarding authority shall set aside 2% of the value of the contract for the purpose described in this Section.

(2) For contracts having an estimated value of at least \$1 million but less than \$10 million, the contract awarding authority shall set aside 1% of the value of the contract for the purpose described in this Section.

(3) For contracts having an estimated value of at least \$10 million but less than \$50 million, the contract awarding authority shall set aside .5% of the value of the contract for the purpose described in this Section.

(4) For contracts having an estimated value of \$50 million or more, the HRC Director, in consultation with the contract awarding authority, shall determine the level of funding necessary to administer and enforce this Ordinance with respect to the subject contract, provided that the funding shall not exceed .5% of the value of the contract. The contract awarding authority shall set aside the designated funds to be used solely for the purpose described in this Section.

(5) Notwithstanding Sections 14B.13(D)(1), (2), (3) and (4), for the Port of San Francisco, the San Francisco Public Utilities Commission, the San Francisco Department of Public Works and the San Francisco International Airport, each such contract awarding authority and the HRC Director shall confer and jointly shall estimate the costs of administering and enforcing this Chapter with respect to each contract to be issued by each such contract awarding authority. The contract awarding authority shall set aside the agreed-upon funds to be used solely for the purpose described in this Section.

If, after exchanging information regarding the nature of the contract and the administrative activities required, the contract awarding authority and the Director do not agree on the cost of administering and enforcing this Chapter, the Mayor or the Mayor's designee shall determine the appropriate amount to be set aside for the purpose described in this Section.

The Human Rights Commission shall report on compliance by contract awarding authorities with set-asides determined under this Section 14B.13(D)(5) and on the agreed upon funds for

contract awarding authorities under 14B.13(D)(5) in the Commission's annual report under Section 14B.15(B).

The Board of Supervisors shall assess the operation of this Section 14B.13(D)(5) in its three-year review under Section 14B.18(H). (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.14. POWERS AND DUTIES OF THE OFFICE OF CONTRACT ADMINISTRATION.

In addition to the duties given the Office of Contract Administration elsewhere, the Office of Contract Administration shall:

(A) Maintain, with the assistance of the Director, a current list of Small-LBEs, Micro-LBEs, MBEs, WBEs, and OBEs to provide each of those commodities or services subject to this Ordinance that the Office of Contract Administration indicates are required by the City.

(B) Maintain a central office where all bids, requests for proposals and solicitations will be listed and kept current.

(C) Cause to be posted upon a website the following information concerning current bids, requests for proposals and solicitations: the title and number; the name of the contract awarding authority; and the name and telephone number of the person to be contacted for further information. Such information shall be posted with sufficient lead time to provide adequate notice and opportunity to potential City contractors and vendors to participate in the bid opportunity, request for proposals or solicitation, but in no event less than 10 calendar days prior to the due date for such bid opportunity, request for proposals or solicitation. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.15. REPORTING AND REVIEW.

(A) **Reporting by the Director.** Commencing January 1, 2007, and no later than the first day of every third month thereafter, the Director shall issue a written report to this Board. That report shall document each City department's performance under the terms of this Ordinance, including, among other things, each City

department's progress in meeting LBE goals and ensuring non-discrimination against MBEs, WBEs, and OBEs, and the success of each department's prime contractors in complying with the LBE subcontracting provisions of this Ordinance and ensuring non-discrimination against MBEs, WBEs, and OBEs. That report shall also state the level of participation of all categories of LBEs and whether or not each City department has fully reported all data required by this Ordinance or requested by HRC or the Controller.

(1) Whenever the Director's report concludes that a department management's intentional disregard or negligent performance of obligations imposed by this Ordinance has contributed to that department's failure to meet its prime contracting goals or requirements of this Ordinance, or the failure of its prime contractors to meet their subcontracting goals or requirements of this Ordinance, or whenever the Director's report concludes that a City department has failed to provide any data required by this Ordinance or requested by the HRC or the Controller, the Clerk of this Board shall schedule before the appropriate Committee of the Board a hearing on that report. The Clerk shall also give notice of that hearing to the heads of the departments identified in the report and request the attendance of the heads of those departments at the committee hearing. The Clerk's notice shall inform the department heads that they must be prepared to respond to the Director's finding of intentional disregard and/or negligent performance and to explain what steps they intend to take to forestall repetition of the problems identified in the Directors' report. The same procedure shall be followed whenever the Director's report identifies any department as having failed to meet its prime or subcontracting goals for three consecutive quarters. If the Director's report indicates that a City department has not met its goals for three consecutive quarters, HRC and the City department shall institute a targeted program to remedy lack of participation by LBEs in any affected industry.

(2) The Director shall report to the Commission all waivers acted upon pursuant to Section 14B.7(J) and 14B.8(A). Such report shall be made on a monthly basis following the granting of the waiver.

(B) **Reporting by City Departments.** By the last day of each fiscal year, all contract awarding authorities and City departments shall report annually to the Mayor on their progress in the preceding fiscal year toward the achievement of the LBE goals and their steps to ensure non-discrimination against MBEs, WBEs, and OBEs.

(C) **Reporting by the Commission.** By July 1st of each fiscal year, the Commission shall submit an annual report to the Mayor and this Board on the progress of the City toward the goals of this Ordinance, together with an identification of problems and specific recommendations for: (1) improving the City's performance in fostering LBE participation in City contracting, and (2) ensuring non-discrimination against MBEs, WBEs, and OBEs. The Commission's report shall include an analysis of the bidding environment in the various industries that participate in City contracts.

Each year, after receiving the Commission's annual report, the Board shall hold a hearing to review the City's performance under this Ordinance, the administration of this Ordinance by the HRC, and the progress of City departments towards the purposes of this Ordinance, and other subjects pertaining to the ordinance.

The Board shall act upon the Commission's recommendations by the first Board meeting of January in each fiscal year. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.16. BONDING AND OTHER ASSISTANCE.

(A) Bonding and Financial Assistance Program.

(1) **Program Description.** The City and County of San Francisco, acting through the Commission, intends to provide guarantees to private bonding companies and financial institutions in order to induce those entities to provide

required bonding and financing to eligible contractors and subcontractors bidding on and performing City public work and construction contracts. This bonding and financial assistance program is subject to the provisions of this Section 14B.16(A).

(2) **Eligible Contracts.** The assistance described in this Section 14B.16(A) shall be available for any City public works or construction contract to which this Ordinance applies.

(3) **Eligible Businesses.** Businesses must meet the following criteria to qualify for assistance under this Section 14B.16(A).

(a) The business may be either a prime contractor or subcontractor; and

(b) The business must be certified by the Director as an LBE according to the requirements of Section 14B.3;

(c) The business may be required to participate in a "bonding assistance training program" as offered by the Commission, which is anticipated to provide the following:

(i) Bond application assistance,

(ii) Assistance in developing financial statements,

(iii) Assistance in development of a pre-bond surety profile,

(iv) Identification of internal financial control systems, and

(v) Development of accurate financial reporting tools.

(4) **Agreements Executed by the Human Rights Commission.** The Director is hereby authorized to enter into the following agreements in order to implement the bonding and financial assistance program described in this Section 14B.16(A):

(a) With respect to a surety bond, the agreement to guaranty up to 40 percent of the face amount of the bond or \$750,000, whichever is less;

(b) With respect to a construction loan to be made to a contractor or subcontractor, an agreement to guaranty up to 50 percent of the original principal amount of the construction loan or 50 percent of the actual loss suffered by the finan-

cial institution as a result of a loan default, whichever is less; provided that in any event the City's obligations with respect to a guaranty shall not exceed \$750,000;

(c) Any other documents deemed necessary by the Director to carry out the objectives of this program, provided that such documents shall be subject to review and approval by the City Attorney's Office.

(5) **Monitoring and Enforcement.** The Director shall maintain records on the use and effectiveness of this program, including but not limited to (1) the identities of the businesses and bonding companies participating in this program, (2) the types and dollar amounts of public work contracts for which the program is utilized, and (3) the types and dollar amounts of losses which the City is required to fund under this program. The Director shall submit written reports to the Board of Supervisors every six months beginning January 1, 2007, advising the Board of the status of this program and its funding capacity, and an analysis of whether this program is providing to be useful and needed.

(6) **Funding and Accounts.** As of September 1, 2006, funding for this program may be derived from the following sources:

(a) The Board of Supervisors has appropriated or will appropriate funds for the operation of this program.

(b) Each Department authorized to contract for public works or improvements pursuant to San Francisco Administrative Code Chapter 6 may commit to this program up to ten percent (10%), but not less than one percent (1%), of the budget for every public work or improvement undertaken. (A "public work or improvement" is defined in San Francisco Administrative Code Chapter 6.).

(c) The Treasurer of the City and County of San Francisco is hereby authorized to negotiate a line(s) of credit or any credit enhancement program(s) or financial products(s) with a financial institution(s) to provide funding; the program's guaranty pool may serve as collateral for any such line of credit.

In the event the City desires to provide credit enhancement under this Subsection for a period in excess of one fiscal year, the full aggregate amount of the City's obligations under such credit enhancement must be placed in a segregated account encumbered solely by the City's obligations under such credit enhancement.

(7) **Term of Bonding Assistance Program.** The Director is authorized to enter into the agreements described in this Subsection for a period ending on the earlier of (1) June 30, 2008 or (2) the date on which the Controller is no longer able to certify the availability of funds for any new guarantee agreement.

(8) **Default on Guarantees.** The Human Rights Commission shall decertify any contractor that defaults on a loan or bond for which the City has provided a guarantee on the contractor's behalf. However, the Human Rights Commission may in its sole discretion refrain from such decertification upon a finding that the City has contributed to such default.

(B) **Education and Training.** The Director shall continue to develop and to strengthen education and training programs for LBEs and City contract awarding personnel.

(C) **Cooperative Agreements.** With the approval of the Commission and the Board of Supervisors, the Director may enter into cooperative agreements with agencies, public and private, concerned with increasing the use of LBEs in government contracting. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.17. ENFORCEMENT.

(A) The Director shall monitor the City's utilization of Small-MBEs, Micro-LBEs, MBEs, WBEs, and OBEs in City contracting. The Director shall issue an exit report for any contract that includes LBE subcontracting participation and/or LBE prime contract participation as a joint venture partner. The purpose of this exit report is to ensure that prime contractors are complying with their commitments to use LBE subcontractors and LBEs are performing services as set forth in the bid/proposal and contract documents for the joint ventures.

(B) **Investigations.** The Director shall investigate potential violations of this Ordinance.

Bidders, contractors, subcontractors and applicants for certification shall provide to the City any information that the City deems relevant, and shall cooperate in all other respects with such an investigation. A request for information from a bidder, contractor, subcontractor or applicant shall identify the records required and the time for response. If the bidder, contractor, subcontractor or applicant fails to respond to the request for information, or otherwise fails to cooperate in the investigation, appropriate sanctions, as provided in Section 14B.17(C), may be imposed. In an investigation of potential discrimination by a prime bidder prior to contract award, if the bidder fails to respond to the request for information, or otherwise fails to cooperate in the investigation, the bid will be rejected as non-responsive, and additional sanctions may be imposed.

(C) **Conference and Conciliation.** In the Director's sole discretion, the Director may attempt to resolve noncompliance with this Ordinance by any bidder, contractor, subcontractor or applicant for certification through informal processes, including conference and conciliation.

(D) **Sanctions.** The City, including the Director and contract awarding authorities, as appropriate, may impose any of the following sanctions on a bidder, contractor, subcontractor or applicant for certification who fails to comply with this Ordinance, provided that, any violation related to certification must be based on a finding by the Director:

- (1) Reject all bids;
- (2) Declare a bid non-responsive;
- (3) Suspend a contract;
- (4) Withhold funds;
- (5) Assess penalties;
- (6) Debar a bidder;
- (7) Deny certification;
- (8) Revoke certification.

(E) **Procedures for Denials or Revocation of Certification.** Whenever the Director proposes to deny an application for or revoke the

certification of a business, the Director shall notify the applicant or certified business in writing of the basis for the denial or revocation, and the date on which the business will be eligible to reapply for certification. The Director shall provide the applicant or certified business with an opportunity to be heard before a final determination is made. The Director shall require a business to wait at least six months but not more than two years after the denial or revocation before reapplying for certification in the same category.

(F) **Procedures for Director Findings of Discrimination.** In determining whether a bidder, contractor or subcontractor has engaged in discrimination in violation of this Ordinance, the Director may consider: (1) direct evidence of discrimination, (2) procedures used to select subcontractors, including relative qualifications, (3) significant differences not attributable to any legitimate non-discriminatory business reason between the available percentages of MBEs, WBEs, or OBEs capable of providing goods and services as subcontractors on a contract or a series of contracts and the percentages of the bidder's subcontractors who are MBEs, WBEs, or OBEs, or (4) any other relevant evidence.

Whenever the Director proposes to issue a finding of discrimination against any bidder, contractor or subcontractor, the Director shall notify the bidder, contractor or subcontractor in writing of the basis for the finding, provided that any proposal to debar a business shall be governed by Section 14B.17(G). The Director shall provide the bidder, contractor or subcontractor with an opportunity to be heard before a final determination is made.

(G) **Procedures for Debarment.** The Director shall have the authority to act as a charging official under San Francisco Administrative Code Chapter 28 to debar a bidder or contractor for violations of this Chapter. The debarment procedures of Chapter 28 shall govern.

(H) **Commission to Hear Appeals.** Except as provided in Section 14B.17(G), the Commission shall hear appeals challenging any determination of the Director under this Section.

The Commission may sustain, reverse or modify the Director's findings and sanctions imposed, or take such other action to effectuate the purpose of this Ordinance. Unless the Commission so orders, an appeal shall not stay the Director's findings and the imposition of sanctions.

(I) **Referral to Other Agencies.** No person shall knowingly make, file or cause to be filed with the City any materially false or misleading statement or report in connection with this Ordinance. If the Director has reason to believe that any person has knowingly made, filed, or caused to be filed with the City any materially false or misleading statement or report made in connection with this Ordinance, the Director shall report that information may impose any sanction described in this Section 14B.17, or may refer the matter to the City Attorney or the District Attorney for appropriate action.

(J) **Willful Noncompliance by Contract Awarding Authority.** Whenever the Director finds after investigation that a contract awarding authority has willfully failed to comply with its duties under this Ordinance, the Director shall transmit a written finding of noncompliance specifying the nature of the noncompliance, to the contract awarding authority, the Commission, the Mayor and this Board.

The Director shall attempt to resolve any noncompliance through conference and conciliation. Should such attempt fail to resolve the noncompliance, the Director shall transmit a copy of the finding of noncompliance along with a finding that conciliation was attempted and failed to the Commission and this Board.

The finding of noncompliance shall be communicated to the Mayor for appropriate action to secure compliance. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

SEC. 14B.18. APPLICABILITY, OPERATIVE DATE AND TRANSITION PROVISIONS.

(A) **Suspension of Chapter 12D.A.** All provisions of Administrative Code Chapter 12D.A that were invalidated by the Superior Court orders dated July 26 and August 23, 2004, in

Coral Construction, Inc. v. City and County of San Francisco (Sup. Ct. No. 421249) shall be and are suspended and are of no force and effect; provided, however, the provisions of Chapter 12D.A that were invalidated by the court's orders shall be suspended only so long as, and only to the extent that, the City is enjoined by the court from enforcing the provisions of Chapter 12D.A. If the injunction is lifted or stayed in its entirety, Chapter 12D.A shall automatically become effective and enforceable, and this Chapter 14B shall be suspended.

(B) **Operative date of this Chapter.** Chapter 14B shall become operative on September 1, 2006, and shall govern all contracts initiated on or after that date.

(C) **Applicability.** Chapters 12D.A, 14A and 14B shall apply as follows:

(1) Any amendment to a contract initiated before July 26, 2004 in which the Contractor agreed to comply with Chapter 12D.A shall be governed by Chapter 12D.A; provided, however, that if a competitive solicitation for an agreement to the proposed changes to the contract is required by law, or the law would otherwise require execution of a new contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and not Chapter 12D.A shall apply.

Chapter 14A shall apply to (1) all contracts in which the Contractor agreed to comply with Chapter 14A and any amendment to those contracts and (2) all contracts initiated on or after July 26, 2004 and before September 1, 2006 and any amendment to such contracts; provided, however, that if a competitive solicitation for an agreement to the proposed changes to the contract is required by law, or the law would otherwise require execution of a new contract, rather than an amendment to an existing contract, the provisions of Chapter 14B and not Chapter 14A shall apply.

(2) This Chapter 14B shall govern all contracts initiated on or after September 1, 2006, and any amendments thereto.

(3) For all contracts described in Section 14B.18(C)(1) and Section 14B.18(C)(2) to which this Chapter 14B applies, when any provision of the San Francisco Municipal Code or other local law refers to Chapter 12D.A or 14A of the San Francisco Administrative Code, it shall be read as referring instead to Chapter 14B.

(D) **Transition Provisions.** In order to effect an orderly transition from Chapter 14A to this Ordinance, any business certified as an LBE under Chapter 12D.A or a DBE under Chapter 14A shall be deemed an LBE under this Chapter 14B until the earlier of (1) the expiration of the business' certification under 12D.A or 14A, (2) the business' failure to maintain the certification criteria under which it was certified, or (3) January 1, 2007. The Director may, by appropriate rules and regulations, establish procedures to allow such businesses certified as LBEs or DBEs under 12D.A or 14A to demonstrate their eligibility for certification under Section 14B.3 of this Ordinance on an expedited basis, prior to the expiration of their existing certification.

The Director shall deem any application for DBE certification under Chapter 14A that is pending on the effective date of this Ordinance to be an application for certification under Chapter 14B.

(E) **State or Federal Provisions.** In contracts which involve the use of any funds furnished, given or loaned by the Government of the United States or the State of California, all laws, rules and regulations of the Government of the United States or the State of California or of any of its departments relative to the performance of such work and the conditions under which the work is to be performed, shall prevail over the requirements of this Ordinance when such laws, rules or regulations are in conflict.

(F) **Severability.** The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Ordinance, or the invalidity of the application thereof to any person or circumstances shall not

affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

(G) **General welfare clause.** In undertaking the enforcement of this Ordinance, the City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

(H) **Three-year review.** No later than three years from the effective date of this Ordinance, the Board of Supervisors shall hold a hearing for the purpose of conducting a comprehensive review of this Ordinance. The Board shall take testimony from all affected parties, and shall enact any changes that it deems appropriate.

(I) **Municipal Transportation Agency.** Consistent with Charter Section 8A.101(g), the Municipal Transportation Agency shall comply with the provisions of this Chapter 14B. (Added by Ord. 92-06, File No. 050784, App. 5/11/2006)

CHAPTER 15: MENTAL HEALTH SERVICE

- Sec. 15.1. Definitions.
- Sec. 15.10. Established Pursuant to State Law.
- Sec. 15.11. To Be Administered by Director of Health; Powers and Duties of Director.
- Sec. 15.12. Mental Health Board—Composition and Appointment of Members.
- Sec. 15.13. Mental Health Board—Terms and Removal.
- Sec. 15.14. Mental Health Board—Powers and Duties.
- Sec. 15.15. Services Which May Be Provided.
- Sec. 15.16. Mental Health Services.
- Sec. 15.17. Drug Abuse Advisory Board.
- Sec. 15.18. Alcoholism Programs—Administration.
- Sec. 15.19. City-Wide Alcoholism Advisory Board.
- Sec. 15.20. AIDS and HIV Policy.
- Sec. 15.21. AIDS Information and Education.
- Sec. 15.22. Responsibility of Director of Health.
- Sec. 15.23. Mental Health Services for Indigent and Uninsured.
- Sec. 15.100. Training Programs.
- Sec. 15.101. Volunteer Auxiliaries; Use of Space for Gift Shop and Other Facilities.
- Sec. 15.102. Agreements with Volunteers for Medical Services.
- Sec. 15.103. Agreements for Use of Emergency Medical Service Communications Center.
- Sec. 15.104. Membership in University HealthSystems Consortium and

University HealthSystems
Consortium Services
Corporation.

SEC. 15.1. DEFINITIONS.

For the purpose of Chapter 15, certain words and phrases shall be construed as hereafter defined. Words in the singular include the plural, and words in the plural shall include the singular. Words in the present tense shall include the future.

(a) **Department.** The term "Department" means the Department of Public Health of the City and County of San Francisco.

(b) **Director of Health.** The term "Director of Health" includes the Director of Health, or his or her designee. (Added by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.10. ESTABLISHED PURSUANT TO STATE LAW.

There is hereby established the Community Mental Health Service in the City and County, pursuant to the provisions of Sections 9000 to 9058 of the Welfare and Institutions Code of the State of California (the Short-Doyle Act). (Ord. No. 193-58, Sec. 1; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.11. TO BE ADMINISTERED BY DIRECTOR OF HEALTH; POWERS AND DUTIES OF DIRECTOR.

The Community Mental Health Service in the City and County shall be administered by the Director of Health for the City and County. The Director shall have the following powers and duties:

(a) **Chief Executive Officer.** The Director shall serve as chief executive officer of the Community Mental Health Service and shall be responsible to the Board of Supervisors.

(b) **General Supervision.** The Director shall exercise general supervision over mental health services and facilities furnished, operated or supported as part of the Community Mental Health Service in the City and County.

(c) **Recommendations to Board of Supervisors.** The Director shall recommend to the Board of Supervisors, after consultation with the Advisory Board, the provisions of services, establishment of facilities, contracting for service or facilities and other matters necessary or desirable to accomplish the purpose of the Community Mental Health Service.

(d) **Annual Report.** The Director shall submit an annual report to the Board of Supervisors, reporting all activities of the Community Mental Health Services, including a financial accounting of expenditures and a forecast of anticipated needs for the ensuing year.

(e) **Studies.** The Director shall carry on such studies as may be appropriate for the discharge of duties, including the control and prevention of psychiatric disorders. (Ord. No. 193-58; Sec. 2; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.12. MENTAL HEALTH BOARD—COMPOSITION AND APPOINTMENT OF MEMBERS.

(a) There is hereby established a mental health board pursuant to the requirements of Welfare and Institutions Code Section 5604 et seq., to be known as the San Francisco Mental Health Board.

(b) The San Francisco Mental Health Board shall consist of 17 members. Each member of the Board of Supervisors shall appoint a member of the Mental Health Board. The Board of Supervisors shall appoint the remaining six members, one of whom shall be a member of the Board of Supervisors.

(c) As required by Welfare and Institutions Code Section 5604, at least nine members of the Board shall be consumers or the parents, spouses, siblings or adult children of consumers; at least four members shall be consumers; and at least four members shall be family of consumers. For

purposes of this section, "family" includes domestic partners and significant others. For purposes of this section, a "consumer" is a person who has received mental health services in San Francisco from any program operated or funded by the City and County, from a State hospital, or from any public or private nonprofit mental health agency. The Board of Supervisors member position shall not count in determining whether the "consumer" and "family of consumer" requirements of this section are met.

(d) In addition to the requirements of subsection (c), one member of the Board shall be a child advocate (a family member or consumer advocate for minors who use mental health services); one member shall be an older adult advocate (a family member or consumer advocate for persons 60 years of age or older who use mental health services); and two members shall be from the following professions: psychiatry, psychology, mental health social work, nursing with a specialty in mental health, marriage and family counseling, psychiatric technology, or administrator of a hospital providing mental health services or of a community mental health facility.

(e) Any positions not allocated to specific types of members may be filled by persons with experience and knowledge of the mental health system representing the public interest.

(f) The Board membership shall reflect the ethnic diversity of the client population in the County. The composition of the Board shall, to the extent feasible, represent the demographics of the City and County as a whole. No member of the Mental Health Board or his or her spouse shall be a full-time or part-time County employee of a County mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a Bronzan-McCorquodale contract agency.

(g) References in this Code or other ordinance of the City and County to the Advisory Board of the Community Mental Health Services shall be deemed references to the San Francisco Mental Health Board. (Added by Ord. 98-93, App. 4/13/93; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.13. MENTAL HEALTH BOARD—TERMS OF REMOVAL.

(a) Except for the Board of Supervisors member, the term of each member shall be for three years. Members serving on the Mental Health Advisory Board at the time this ordinance takes effect shall be members of the San Francisco Mental Health Board and shall continue serving the remainder of the terms of office that would have applied had the Advisory Board remained in existence; provided, however, that nothing shall preclude any member from resigning and that the term of office of any member may be terminated for the reasons and subject to the procedures set forth in this section.

(b) No member shall serve more than two consecutive terms. Terms served by members prior to the effective date of this ordinance shall be counted in implementing this term limit. A member shall be deemed to have served a term only if he or she serves at least 18 months of a term.

(c) The term of office of a member appointed by an individual Board of Supervisors member is not affected by the Board of Supervisors member no longer continuing in that office.

(d) A member shall be removed from office if he or she is absent for four meetings in one year, unless the Mental Health Board grants that persona leave of absence. The Board may grant leaves of absence for one or more meetings. Upon determining that a member has been absent for four meetings in a 12-month period and that no leave of absence had been granted for these meetings, the Board shall provide written notification to the Board of Supervisors. Upon receipt of the notification, the position shall be deemed vacant.

(e) The Mental Health Board may recommend to the Board of Supervisors that a member be removed from the Board on the grounds that the member's conduct is seriously disruptive of the functioning of the Mental Health Board. Once the Mental Health Board makes such a recommendation, the Board of Supervisors may remove a member from the Mental Health Board if it determines that the member's conduct is

seriously disruptive of the functioning of the Mental Health Board. (Added by Ord. 98-93, App. 4/13/93; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.14. MENTAL HEALTH BOARD—POWERS AND DUTIES.

(a) The San Francisco Mental Health Board shall:

(1) Review and evaluate the City and County's mental health needs, services, facilities and special problems;

(2) Review any City and County agreements entered into pursuant to Welfare and Institutions Code Section 5650;

(3) Advise the Board of Supervisors, the Health Commission, the Director of Health and the Director of Mental Health as to any aspect of the local mental health program;

(4) Review and approve the procedures used to ensure citizen and professional involvement at all stages of the planning process;

(5) Review the procedures used to ensure the involvement of interested members of the mental health community and the public in the development of the budget for mental health services and report on the matter to the Board of Supervisors;

(6) Submit an annual report to the Board of Supervisors on the needs and performance of the City and County's mental health system;

(7) Review and make recommendations on applicants for the appointment of Director of Mental Health. The Mental Health Board shall be included in the selection process prior to the selection of a person to fill this position;

(8) Review and comment on the City and County's performance outcome data and communicate its findings to the State Mental Health Commission;

(9) Assess the impact of the realignment of services from the State to the City and County on services delivered to clients and on the local community.

(b) Members of the Mental Health Board shall abstain from voting on any issue in which the member has a financial interest as defined in Section 87103 of the Government Code. The Mental Health Board is subject to the provisions of Government Code Sections 54950 et seq. relating to the conduct of open meetings by local agencies. (Added by Ord. 98-93, App. 4/13/93; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.15. SERVICES WHICH MAY BE PROVIDED.

The Community Mental Health Service may provide any or all the following services for the City and County:

(a) Out-patient psychiatric clinics for those who are unable to obtain private care, including referrals by physicians and surgeons.

(b) In-patient psychiatric services for those who are unable to obtain private care, including referrals by physicians and surgeons.

(c) Rehabilitation services for patients with psychiatric illnesses for those who are unable to obtain private care, including referrals by physicians and surgeons.

(d) Information services to the general public and educational services furnished by qualified mental health personnel to schools, courts, health and welfare agencies, probation departments and other appropriate public or private agencies or groups authorized in the approved plan for Community Mental Health Services.

(e) Psychiatric consultant services to public or private agencies for the promotion and coordination of services that preserve mental health and for the early recognition and management of conditions that might develop into psychiatric illnesses.

(f) Any other services which are now or which may be subsequently permitted by the Short-Doyle Act (Sections 9000 to 9058 of the State Welfare and Institutions Code). (Ord. No. 193-58, Sec. 5; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.16. MENTAL HEALTH SERVICES.

(a) **Legislative Intent.** By enacting this Section the Board of Supervisors declares its intent to more specifically delineate the long-range planning and budgetary uses of the San Francisco Community Mental Health Services Plan. This Section shall be construed as an expression of the policy of the Board of Supervisors with regard to the Community Mental Health Services Plan, but shall not be construed as an enactment of specific legal provisions. Nothing in this Section shall supplant existing law. Upon passage of this Section, the Department of Public Health and the Health Commission shall take whatever steps are necessary to implement the policies contained in this Section.

(b) **Standards.** Prior to the submission to the Board of Supervisors of the City and County budget, the Department of Public Health shall establish a mental health service priority schedule to be included in its San Francisco Community Mental Health Services Plan.

The Plan shall intend as a goal, the reduction of reliance on acute hospital care through the development of a comprehensive range of noninstitutional community services which meet the California Mental Health Services Act mandate of provision of services in the least restrictive settings.

The County Mental Health Plan shall include:

(1) A stratagem for addressing any current overuse of State hospitals, detailing specific steps necessary to assess the capacity of the City to operate within allocated State hospital patient days. This in no way is to preclude the City from arranging for increased State hospital allocations if required.

(2) A proposed maximum number of acute inpatient beds, exclusive of those at State hospitals, per 100,000 City population. This proposed use level shall be consistent with accepted statewide standards for inpatient use, and shall reflect current use levels as well as any factors which uniquely affect inpatient utilization levels for San Francisco mental health clients.

(3) A proposed maximum number of skilled nursing care beds per 100,000 City population. The proposed use level shall be consistent with the policy to serve clients, to the maximum extent possible, within the City as well as the policy to serve mental health clients in least restrictive, community settings.

(4) A description of the range and type of community programs and services necessary to achieve the goal of reducing reliance on acute hospital services and other institutional levels of care. Emphasis shall be made on the use of mental health services to achieve the highest degree of independent functioning by clients in the community. The description shall reflect a commitment to the development of services, at all levels, which are responsive to the needs of cultural and linguistic minorities including implementation of planning specifically for minority services. The range of service elements shall include, but not be limited to:

(A) Emergency services, crisis intervention, screening and evaluation;

(B) Levels of residential treatment services including acute alternatives, long-term residential services, transitional residential services, and cooperative housing programs;

(C) Day treatment services;

(D) Levels of vocational programs including pre-vocational services, transitional employment programs, and job placement;

(E) Outpatient services;

(F) Case management services which address the requirement for continuity of care and ongoing community support for a broad range of mental health clients;

(G) Socialization services;

(H) Housing programs, including support for clients who are living independently;

(I) Advocacy, including ongoing assurance of clients' rights protection; and

(J) Community outreach services, including consultation and education, community organization efforts.

(5) For each type of service described, there shall be stated an estimated minimum level of service necessary to achieve the goals of this Section. This may be expressed in terms of beds per 100,000 population or full-time equivalent staff (F.T.E.) per 100,000. In addition, current levels of service in each category shall be compared to projected minimum level goals to establish areas of programmatic need.

(6) The development of the full range of required levels of care, including the implementation of maximum bed levels described in (1) and (2) above, should be accomplished by July 1, 1990. This shall include an estimate of the cost of maintaining current levels of necessary services as well as required funding to provide the full range of required services described in the County Plan. This estimate shall include the identification of funding shifts from existing inpatient and skilled nursing categories to achieve the service goals for services described in Subsection (4) above.

(7) At all levels of the County Plan, specific attention shall be paid to addressing the current capacity, and the projected need, to assure cultural, ethnic and linguistic relevance and responsiveness of City and County mental health services. Specifically:

(i) All existing and new programs shall have bilingual and bicultural staffing in adequate proportions in relationship to their community population and need. At minimum, there shall be parity in terms of staffing on all levels including administrative, clerical and clinical. In addition, all non-minority staff who are involved in the provision of services to minority groups shall be qualified to do so.

(ii) All programs shall indicate the cultural relevance of the treatment procedures including the availability of services or programming in culturally relevant languages, sensitivity toward particular elements within the cultures served, in-service training of staffing for administrative, clerical and clinical staff, and minority consultation and supervision. All changes in program-

ming shall address the specific effects of such modifications on minorities both linguistically and culturally.

(8) The range and type of services required to meet the special mental health needs of mentally disabled clients with substance abuse problems. Specific attention shall also be paid to the development of services to address the mental health issues related to AIDS and associated problems including mental health clients with AIDS or ARC and mental health clients with AIDS or ARC and substance abuse.

(9) Programs serving children and adolescents shall follow the guidelines and principles set forth in this Section and, in addition, shall meet the following criteria unique to this population:

(i) The programs shall, to the maximum extent feasible, be designed so as to reduce the disruption and promote the reintegration of the family unit of which the child is a part;

(ii) The programs shall have an education focus and shall demonstrate specific linkage with community education resources; and

(iii) The programs shall contain a specific follow-up component.

(10) The range and type of services required to meet the special mental health needs of geriatric clients and of children and youth.

(11) A plan for addressing, at all levels of service, the mental health needs of individuals in the criminal justice system.

(12) A plan for incorporating self-help concepts and significant involvement of consumer participation at all levels of service in the mental health system.

(13) A management plan to develop and implement a method of coordination of the entire range of services so that all levels of care are reviewed and monitored to assure continual accountability of all program elements in the effort to achieve system goals. This shall include the coordination of inpatient services at San Francisco General and Laguna Honda Hospitals with the full range of community resources. (Added by Ord. 25-88, App. 1/28/88; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.17. DRUG ABUSE ADVISORY BOARD.

(a) **Establishment of Drug Abuse Advisory Board.** Pursuant to Section 11964 of the California Health and Safety Code there is hereby created an Advisory Board of 15 members known as the Drug Abuse Advisory Board, who shall be appointed by the Board of Supervisors and who shall serve without compensation.

(b) **Composition.** Members of the Advisory Board shall be residents of the City and County of San Francisco who have a professional interest in or a personal commitment to alleviating drug abuse. Membership shall include representatives from various social, economic and occupational groups and shall be broadly representative of the demographic characteristics of San Francisco. Appointments to the Advisory Board shall reflect public policy favoring a broadly constituted membership that reflects the diversity of the general public of San Francisco, including ethnic minorities, women, and persons from varying economic levels. Membership shall be drawn from all areas of the City and County. Two members shall be from law enforcement and at least two but no more than five shall be drug abuse treatment providers. The remaining members shall be from the general public.

(c) Restrictions on Membership.

(1) The Advisory Board shall not include any person or his or her spouse who is any of the following:

(A) A member of the Board of Supervisors or a person on the staff of a member of the Board of Supervisors;

(B) An employee of the Department of Public Health, including a therapist or counselor who is paid by the Department or who works at a Department clinic.

(2) The Advisory Board shall not include in excess of 33⅓ percent of its membership any person or his or her spouse who is any of the following:

(A) A member of a board of directors or advisory board or employee of any City and County operated or City and County contract provider of drug services, or of any program

approved pursuant to Section 11876 of the California Health and Safety Code (methadone program);

(B) A direct recipient of any State funds allocated for drug programs under Part 3 of Division 10.5 of the California Health and Safety Code pursuant to a contract with the State Department of Health Services which shall include compensation for contracted service or membership on an advisory body or board of directors of such recipient agency.

(d) **Term of Membership.** The term of each membership shall be three years. Vacancies on the Advisory Board shall be filled for the unexpired term of the membership position which becomes vacant.

(e) **Termination of Membership.**

(1) Membership on the Advisory Board shall terminate with expiration of the term to which the member was appointed or if the member ceases to maintain the status which qualified him or her for appointment, except that the member may continue to serve until a successor is appointed.

(2) A member of the Advisory Board shall be deemed to have resigned his or her membership if he or she fails to attend regular meetings of the Advisory Board for three consecutive months unless the absences are excused by a majority vote of the Advisory Board.

(3) The Advisory Board may adopt standards for removing members for cause, which standards must:

(A) Be consistent with the provisions of Section 11964 of the California Health and Safety Code; and

(B) Be approved by the Board of Supervisors.

(f) **Frequency and Conduct of Meetings.** The Advisory Board shall meet at least monthly and may meet at such other times as may be deemed necessary by the chair or the county's Drug Program Administrator. Meetings of the Advisory Board shall be open to the public and subject to the provisions of the Ralph M. Brown Act, Sections 54950 et seq. of the Califor-

nia Government Code and the Sunshine Ordinance, San Francisco Administrative Code Chapter 67.

(g) **Duties.** The Advisory Board shall coordinate its efforts, where appropriate, with San Francisco's other advisory boards concerned with drug problems and shall perform the duties specified in Section 11965(k) of the California Health and Safety Code. In addition, the Advisory Board shall issue written recommendations regarding the funding of proposals for services received by the County's Drug Program Administrator. (Added by Ord. 467-87, App. 12/3/87; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.18. ALCOHOLISM PROGRAMS—ADMINISTRATION.

The Department of Public Health of the City and County of San Francisco is designated as the agency with the responsibility for the administration of alcoholism programs in the City and County of San Francisco pursuant to Section 11800 of the California Health and Safety Code. (Res. No. 591-68, App. 8/27/68; codified by Ord. 193-74, App. 4/18/74; amended by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.19. CITY-WIDE ALCOHOLISM ADVISORY BOARD.

(a) **Establishment of City-Wide Alcoholism Advisory Board.** Pursuant to Section 11805 of the California Health and Safety Code there is hereby created an Advisory Board of 15 members known as the City-Wide Alcoholism Advisory Board, who shall be appointed by the Board of Supervisors and who shall serve without compensation.

(b) **Composition.** Members of the Advisory Board shall be residents of the City and County of San Francisco who have a professional interest in and personal commitment to alleviating alcohol abuse. Membership shall include representatives from various social, economic and occupational groups and shall be broadly representative of the demographic characteristics of San Francisco. Membership shall be drawn from all areas of the City and County.

(c) **Restrictions on Membership.**

(1) The Advisory Board shall not include any person or his or her spouse who is any of the following:

(A) A member of the Board of Supervisors or a person on the staff of a member of the Board of Supervisors;

(B) An employee of the City and County of San Francisco Department of Public Health, including a therapist or counselor who is paid by the Department or who works at a Department clinic.

(C) A member of a board of directors or advisory board or employee of any City and County operated or City and County contract provider of alcoholism services.

(d) **Term of Membership.** The term of each membership shall be three years. Vacancies on the Advisory Board shall be filled for the unexpired term of the membership position which becomes vacant.

(e) **Termination of Membership.**

(1) Membership on the Advisory Board shall terminate with expiration of the term to which the member was appointed or if the member ceases to maintain the status which qualified him or her for an appointment, except that the member may continue to serve until a successor is appointed.

(2) A member of the Advisory Board shall be deemed to have resigned his or her membership if he or she fails to attend regular meetings of the Advisory Board for three consecutive months unless the absences are excused by a majority vote of the Advisory Board.

(3) The Advisory Board may adopt standards for removing members for cause. These standards must be approved by the Board of Supervisors.

(f) **Frequency and Conduct of Meetings.** The Advisory Board shall meet at least monthly and may meet at such other times as may be deemed necessary by the chair or the Director of Health or his or her designee. Meetings of the Advisory Board shall be open to the public and subject to the provisions of the Ralph

M. Brown Act, Sections 54950 et seq. of the California Government Code and the Sunshine Ordinance, Chapter 67 of the San Francisco Administrative Code.

(g) **Duties.** The Advisory Board shall coordinate its efforts where appropriate, with San Francisco's other advisory boards concerned with substance abuse problems and shall provide community participation in the planning, budgeting, and monitoring of the City and County's alcohol-related services. (Added by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.20. AIDS AND HIV POLICY.

It is the policy of the City and County of San Francisco to reduce the spread of AIDS and HIV infection and to increase employees general understanding of the nature of the transmission and the illness associated with the infection. (Added by Ord. 4-88, App. 1/7/88; Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.21. AIDS INFORMATION AND EDUCATION.

The heads of the various departments, offices, and commissions of the City and County, shall make available information about educational programs on, and for the diagnosis, prevention, and control of, acquired immune deficiency syndrome (AIDS) to all City and County employees. (Added by Ord. 4-88, App. 1/7/88; Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.22. RESPONSIBILITY OF DIRECTOR OF HEALTH.

The Director of Health, or his or her designee, shall be responsible for implementing and assessing an educational program about AIDS addressed to City employees. Funds for this program shall be from existing sources. All departments, officers and employees of the City and County of San Francisco shall assist the Director of Health in the implementation of this ordinance. (Added by Ord. 4-88, App. 1/7/88; Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.23. MENTAL HEALTH SERVICES FOR INDIGENT AND UNINSURED.

(a) **Findings.** The City and County of San Francisco is committed to protecting public mental health services for indigent and uninsured mentally ill residents of San Francisco. If timely, effective and coordinated mental health treatment is not provided to indigent and uninsured residents who are not seriously mentally ill, those residents are at risk of becoming seriously mentally ill and hence requiring more expensive and comprehensive mental health care from San Francisco.

(b) **Standards.** The Department shall provide a single standard of mental health services access and care for indigent and uninsured residents of the City and County of San Francisco and Medi-Cal beneficiaries who are residents of the City and County of San Francisco. (Added by Ord. 194-05, File No. 051030, App. 7/29/2005)

SEC. 15.100. TRAINING PROGRAMS.

The Director of Health, subject to the approval of the Health Commission, is authorized to enter into agreements with the authorized representatives of any educational program having accredited programs of instruction for medical workers in the allied health professions.

Such agreements shall provide that the Department will accept only that number of students at each facility, for any period of time, that can be trained without interference with the normal functioning of each facility; and that the Department will not be responsible for travel or other expenses of students or their instructors by reason of this relationship. (Added by Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.101. VOLUNTEER AUXILIARIES; USE OF SPACE FOR GIFT SHOP AND OTHER FACILITIES.

The Director of Health, with the approval of the Health Commission, may authorize the use of space at San Francisco General Hospital by the San Francisco General Hospital Volunteer Auxiliary, at Laguna Honda Hospital by the

Laguna Honda Hospital Volunteer Auxiliary, and at other Community Health Network institutions for the use of their volunteer auxiliaries for administrative offices and the operation of gift shops, snack shops, and other concessions as approved by the Director of Health. Such space may be provided free of rent or other charges. The Director of Health may authorize the Volunteer Auxiliaries to make modifications and improvements to such space and to install appropriate fixtures and equipment. The Volunteer Auxiliaries shall maintain sufficient insurance for the use of such space and for their activities at the hospital or institution.

All net proceeds from the operation and sales from such concessions shall be used solely for the benefit of the patients, staff, and visitors of San Francisco General Hospital, Laguna Honda Hospital, or the relevant Community Health Network institution. Each Volunteer Auxiliary shall file an annual report with the Director of Health and the Health Commission which sets forth the proceeds received, the disbursements thereof, and the number and type of volunteer hours donated for the year. In addition, each Volunteer Auxiliary shall have an independent audit performed each year and shall provide a copy of the audit report to the Director of Health and the Health Commission. (Amended by Ord. 265-85, App. 5/30/85; Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.102. AGREEMENTS WITH VOLUNTEERS FOR MEDICAL SERVICES.

The Director of Health is hereby authorized to enter into and execute written agreements on behalf of the City and County of San Francisco with persons who agree to provide services voluntarily to the homeless or to patients treated at Department of Public Health Facilities, including hospital facilities, under the clinical supervision of a City employee, including but not limited to physicians providing medical care. These agreements may provide that the volunteer is an employee of the City and County of San Francisco for purposes of the Tort Claims Act. The Director of Health shall, on an annual basis, report to the Risk Manager the circumstances

under which the volunteers are selected, the protocols under which they operate, the location of operations, and any other information suggested by the Risk Manager to enable the Risk Manager to assess the City's potential liability for operation of this medical services program. (Added by Ord. 531-88, App. 12/16/88; amended by Ord. 418-89, App. 11/17/89; Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.103. AGREEMENTS FOR USE OF EMERGENCY MEDICAL SERVICE COMMUNICATIONS CENTER.

The Director of Health, with the approval of the Health Commission, is authorized to execute agreements with hospitals and ambulance companies permitting communication by said hospitals and ambulance companies by voice and radio telemetry through City and County's communications center. (Amended by Ord. 265-85, App. 5/30/85; Ord. 337-99, File No. 992043, App. 12/30/99)

SEC. 15.104. MEMBERSHIP IN UNIVERSITY HEALTHSYSTEMS CONSORTIUM AND UNIVERSITY HEALTHSYSTEMS CONSORTIUM SERVICES CORPORATION.

The Director of Health is hereby authorized to apply and pay for membership of the Department of Public Health in the University HealthSystems Consortium and the University HealthSystems Consortium Services Corporation. Upon obtaining membership, the Department of Public Health is authorized to utilize all services provided by the University HealthSystems Consortium and the University HealthSystems Consortium Services Corporation including, but not limited to, the Purchasing Program and the clinical and financial databases. The Director of Health is authorized to enter into and execute written agreements on behalf of the City and County of San Francisco with the University HealthSystems Consortium and the University HealthSystems Consortium Services Corporation. The Director of Health is also authorized to enter into and execute written agreements and execute purchase orders on behalf of the City

and County of San Francisco with suppliers of goods and materials selected by the University HealthSystems Consortium Services Corporation through its competitive bidding process. Said agreements and purchase orders shall be governed by the terms of the University HealthSystems Consortium Services Corporation's standard terms and conditions. (Added by Ord. 29-97, App. 2/7/97; Ord. 337-99, File No. 992043, App. 12/30/99)

CHAPTER 16: OFFICERS AND EMPLOYEES GENERALLY

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Editor's Note:

The text of Proposition J, known as The City and County of San Francisco Taxpayer Protection Amendment of 2000, adopted November 2000, has been codified as Article III, Chapter 7, of the Campaign and Governmental Conduct Code.

San Francisco - Administrative Code

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ARTICLE I: IN GENERAL

- Sec. 16.1. Military Leaves—Payment of Salaries for Thirty-Day Period.
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- Sec. 16.9-29B. Program for Employees with Catastrophically Ill Family Members—Transfer of Vacation Credits to Individual Employees with a Catastrophically Ill Family Member.
- Sec. 16.9-31. State Disability Insurance Program Enrollment.

SEC. 16.1. MILITARY LEAVES— PAYMENT OF SALARIES FOR THIRTY-DAY PERIOD.

Any officer or employee of the City and County or any non-certificated officer or employee of the Unified School District of the City and County who, in accordance with the rules of the Civil Service Commission, is granted military leave for service in the Armed Forces of the United States or the State and who has been in the employ of the City and County or the Unified School District for a period of not less than one year continuously prior to the date upon which such military leave begins, shall be granted his regular salary or compensation while on such leave for a period not to exceed 30 calendar days in any fiscal year nor for more than 30 calendar days in any period of continuous military leave.

The Civil Service Commission is authorized to adopt and enforce rules and regulations to carry out the meaning and intent of this Section. (Ord. No. 6285(1939), Secs. 1, 2)

SEC. 16.2. MILITARY LEAVES— AUTHORIZED FOR SEA DUTY ABOARD GOVERNMENT OPERATED SHIPS.

Subject to rules of the Civil Service Commission, leaves of absence shall be granted to officers and employees of the City and County and to noncertificated officers and employees of the Unified School District for sea duty as licensed officers aboard ships operated by or for the United States government. The duration of such leaves of absence, under such Civil Service Commission rules, shall be limited to the period of

any emergency declared by the president of the United States or by the Congress, or to the life of any act authorizing compulsory military service or training. (Ord. No. 6644(1939), Sec. 1; amended by Ord. 149-00, File No. 000696, App. 6/30/2000)

SEC. 16.4. HOURS OF CITY OFFICES.

(a) Except where otherwise provided by law, all public offices shall be open for business every day, except legal holidays other than days on which an election is held throughout the State, from 8:30 a.m., until 5:00 p.m., except where additional hours are set for the department by the department head.

(b) The offices of the City and County shall be closed on Saturday of each week during the year, except where otherwise determined by the department head. (Ord. No. 6896(1939), Sec. 1; amended by Ord. 287-96, App. 7/12/96; Ord. 438-96, App. 11/8/96; Ord. 149-00, File No. 000696, App. 6/30/2000)

SEC. 16.5. CESAR CHAVEZ DAY.

(a) March 31st shall be a holiday, known as "Cesar Chavez Day."

(b) This section shall create a paid holiday for represented employees of the City and County of San Francisco only to the extent allowed by ratified Memoranda of Understanding between the City and the affected recognized employee organizations. This section will not create a paid holiday for City employees until funds have been allocated for such a holiday.

(c) The process for establishing a paid holiday for City employees is the following:

(1) For employees represented by an employee organization whose labor contract (Memorandum of Understanding, or MOU) contains the following, or a similar, provision, "Any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor . . . or the President . . .," the Mayor may, by proclamation, provide a paid holiday for those employees covered by the MOU.

(2) For employees represented by an employee organization whose MOU does not contain the language included in subparagraph (1) above, or if the Mayor does not exercise her or his authority under the language in subparagraph (1) above, the Mayor, through the Department of Human Resources, may meet and confer with employee representatives and propose an amendment to the MOU that will provide a paid holiday for those employees covered by the MOU. Such a proposed MOU amendment, if agreed upon by the labor organization and the Mayor, must be approved, or rejected, by the Board of Supervisors, and would become effective the following fiscal year.

(3) For employees who are not represented by an employee organization, the City, by an ordinance approved by the Board of Supervisors, may amend the Unrepresented Employees Ordinance to provide an additional paid holiday for unrepresented City employees. (Added by Ord. 67-01, File No. 010529, App. 5/4/2001)

SEC. 16.6. REPRESENTATION OF CITY AND COUNTY IN CERTAIN ORGANIZATIONS—MEMBERSHIPS IN ORGANIZATIONS AUTHORIZED—ANNUAL REPORT OF MEMBERSHIPS TO THE MAYOR, CONTROLLER AND BOARD OF SUPERVISORS.

City departments and their duly authorized officers and employees may acquire and maintain membership in professional, trade and other organizations, where such membership is in the interest and for the benefit of the City and County, as follows:

By May 1st of each year, each board, commission and department head of the City and County shall submit to the Mayor, the Controller, and the Board of Supervisors a listing for the next fiscal year of each and every organization in which the board, commission or department wishes to be a member, including a listing of the membership cost for each organization in which membership will be sought. The listing shall also specify which organizations have been added to or deleted from the previous year's list. The proposed memberships shall be deemed ap-

proved unless specifically disapproved by resolution of the Board of Supervisors introduced within 60 days of submission of the department's list. (Amended by Ord. 218-91, App. 6/11/91; Ord. 356-98, App. 12/11/98)

SEC. 16.6-1. REPRESENTATION OF CITY AND COUNTY IN CERTAIN ORGANIZATIONS—ANNUAL DUES AND EXPENSES OF MEMBERSHIP; ATTENDING MEETINGS OR CONVENTIONS.

The annual dues and expenses of said memberships, and the costs of attendance at meetings of said organizations, shall be allowed and paid only when funds have been specifically appropriated for such purposes; provided, that the Board of Supervisors, by resolution certified by the Controller as to funds available, may authorize such attendance together with allowance and payment of costs thereof; and, provided further that the Mayor or the Mayor's designee may authorize attendance at meetings in California when funds are certified by the Controller as being legally available for such purposes within the publicity and advertising fund. (Amended by Ord. 208-64, App. 7/24/64; Ord. 287-96, App. 7/12/96; Ord. 356-98, App. 12/11/98)

SEC. 16.6-2. REPRESENTATION OF CITY AND COUNTY IN CERTAIN ORGANIZATIONS—REPRESENTATIVES AT MEETINGS—VOTING CONTRARY TO CITY POLICY.

No officer or employee authorized to attend a meeting or convention by the Board of Supervisors shall cast a vote or make any representation at such meeting or convention, while acting or purporting to act as a representative of the City and County, which he knows to be contrary to or in conflict with any officially established policy of the City and County on the subject matter of the vote or representation.

"Officially established policy" shall mean a policy established by ordinance, resolution or other written document constituting a public

record, made, enacted or adopted by the board or officer having legal jurisdiction to establish such policy for the City and County.

Violation of this Section shall be deemed an act of official misconduct or insubordination and shall subject the violator to the proceedings and the penalties therefor provided by the Charter or other applicable law. (Ord. No. 8736(1939), Secs. 1, 2; amended by Ord. 356-98, App. 12/11/98)

SEC. 16.7. REIMBURSEMENT FOR FUNERAL COSTS.

(a) The Board of Supervisors finds that funerals for active duty City employees who have died in the line of duty often become civic events and by their size and public nature can impose extraordinary costs and hardships upon the families of the deceased, making it appropriate for the City to contribute to the costs of these events.

(b) The Director of Human Resources may authorize payment of some or all of the funeral expenses of active duty City employees whose death is caused by an injury sustained by the employee arising out of and in the course of his or her employment. The Controller may transfer funds to the Director of Human Resources for such purposes from any legally available source.

(c) The Board intends that this Section be given retroactive effect so as to authorize contributions to funeral expenses incurred after July 1, 2006. (Added by Ord. 276-06, File No. 061167, App. 11/17/2006)

SEC. 16.9-2. PEACE OFFICER TRAINING.

The City and County of San Francisco declares that it desires to receive aid from the State of California under the provisions of Chapter 1 of Title 4, Part 4 of the Penal Code of the State of California.

Pursuant to Section 13522 of said Chapter 1, the City and County of San Francisco, while receiving aid from the State of California pursuant to said Chapter 1, will adhere to the standards for recruitment and training established by the California Commission On Peace Officer Standards And Training.

The Chief of Police is hereby authorized and directed to execute such application forms as may be required by said California Commission On Peace Officer Standards and Training pursuant to said Section 13522 for the training of regularly employed and paid officers of the Police Department and the Housing Authority.

The Sheriff is hereby authorized and directed to execute such application forms as may be required by said California Commission On Peace Officer Standards and Training pursuant to said Section 13522 for the training of regularly employed and paid officers of the Sheriff's Office.

The District Attorney is hereby authorized and directed to execute such application forms as may be required by said California Commission On Peace Officer Standards and Training pursuant to said Section 13522 and Section 13524 of the California Penal Code for the training of regularly employed and paid inspectors and investigators of the District Attorney's Office, as defined in Section 830.1 of the California Penal Code, who conduct criminal investigations. (Added by Ord. 80-61, App. 4/13/61; amended by Ord. 460-87, 11/19/87; Ord. 149-00, File No. 000696, App. 6/30/2000)

SEC. 16.9-21. DUTIES OF INTERNS.

The activity of interns shall be that of study and observation. They shall not perform the duties of employees of any department in which placed, or the work of any such department. (Ord. No. 3935(Series of 1939), App. 7/17/46; codified by Ord. 193-74, App. 4/18/74)

SEC. 16.9-22. HOLD HARMLESS CLAUSE.

No compensation shall be paid by the city to any intern during such training. No obligation for employment of any intern subsequent to the training program shall be assumed by any officer, board or commission of the City and County; and no preference as to any position in the City and County government shall be granted to any intern subsequent to such public service training. The City and County of San Francisco shall assume no liability for injury or damage caused by the activity of any intern; nor shall it assume

liability for injury or damage suffered by any intern. (Ord. No. 3935(Series of 1939), App. 7/17/46; codified by Ord. 193-74, App. 4/18/74)

SEC. 16.9-24. EQUAL EMPLOYMENT OPPORTUNITY PLANS.

Each board or commission, each elective officer in charge of an administrative office, the Controller, the Mayor, and each department head appointed by the Mayor shall be responsible for the preparation and implementation of a plan to provide equal employment opportunities to all persons. Each such plan shall address all employment-related subjects the control of which is vested by the Charter in the board, commission, officer, or department. Such subjects shall include, but not be limited to, the following:

- (a) Policy statements;
- (b) Designation of equal employment opportunity responsibilities within the office, board or department, and establishment of a mechanism to evaluate the specific plan adopted;
- (c) Analysis of workforce utilization in each job category by race or national origin, sex, age and salary, as compared to qualified representatives in the relevant market;
- (d) Specific steps to be undertaken within stated timetables to ensure that all persons, regardless of race, national origin, or sex, have equal opportunities for employment; and
- (e) The method of dissemination of the equal employment opportunity plan.

All such plans shall be prepared in consultation with the Civil Service Commission in order to provide technical assistance and recommendations on effective steps to achieve equal employment opportunity. Prior to adoption, the Civil Service Commission shall also approve each equal employment opportunity plan in cooperation with the City Attorney to ensure that compliance is made with all relevant federal, State and local equal opportunity laws or regulations. Should the Civil Service Commission find any such plan not in compliance with the above, it shall immediately so report to the Mayor's Office and Board

of Supervisors. All such plans shall, upon adoption, be filed with the Civil Service Commission for public or other inspection.

In order to facilitate the development of information necessary to the formulation of such plans, the Controller is directed to make appropriate data processing facilities available and to process annual workforce utilization plans as required by this Section, the California Fair Employment Practices Commission, the Equal Employment Opportunity Commission, the Human Rights Commission, the Commission on the Status of Women or any other regulatory agency charged with reviews of nondiscrimination provisions of local, State or federal law.

All such plans shall be periodically reviewed, amended and updated as appropriate on at least an annual basis. An annual report on the performance and progress of such plans shall be prepared and submitted to the Mayor and Board of Supervisors by the Civil Service Commission by the first day of March of each year during the annual budget process. (Added by Ord. 455-79, App. 9/12/79; amended by Ord. 251-92, App. 8/7/92; Ord. 287-96, App. 7/12/96; Ord. 149-00, File No. 000696, App. 6/30/2000)

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SEC. 16.9-25. SEXUAL HARASSMENT POLICY.**(a) Sexual Harassment Policy.**

(1) It is the policy of the City and County of San Francisco that, in accord with State and federal laws, each city employee has the right to work in an environment free of discrimination, including sexual harassment, and that sexual harassment is unacceptable and will not be tolerated in the workplace. The City and County of San Francisco will take all reasonable steps within its control to provide a workplace in which all individuals are treated with respect and dignity. The City and County of San Francisco recognizes that the elimination of sexual harassment in the workplace will create a better working environment, increase productivity, and improve relationships for all employees.

(2) Sexual harassment of a City official or employee is, in accord with State and federal laws, strictly prohibited by another City official or employee. This policy applies to all officials and employees and to all phases of employment, including, but not limited to, recruitment, testing, hiring, promotion or demotion, transfer, lay-off, termination and selection for training.

(3) It is further the policy of the City and County of San Francisco to take reasonable steps, in accord with State and federal laws, to provide its employees with a workplace free of sexual harassment by non-employees, including, but not limited to: contractors and subcontractors of the City and County of San Francisco, clients, volunteers, interns, and members of the general public. It is also the policy of the City and County of San Francisco to take reasonable steps to prohibit its City officials and employees, acting within the scope of their official duties and employment, from sexually harassing non-employees, including, but not limited to: contractors and subcontractors of the City and County of San Francisco, clients, volunteers, interns, and members of the general public.

(4) In order to create and maintain a workplace free from sexual harassment of employees, the City and County of San Francisco will, in accord with State and federal laws, take all reasonable steps to:

(A) Set an example through its leadership and management that sexual harassment will not be tolerated;

(B) Train and educate management and public officials as to their responsibility to carry out the policy of the City and County; and

(C) Train and educate employees regarding sexual harassment issues and policy.

(5) It shall be a violation of this policy to engage in harassing conduct that does not meet the definition of sexual harassment under state and federal law, but that, if repeated or allowed to continue, might meet that definition.

(6) Pursuant to the Charter, the sexual harassment discrimination complaint procedure established by the Civil Service Commission and Human Resources Director is available to review and resolve all allegations of sexual harassment. Persons wishing to file a complaint are urged to contact the Human Resources Department Equal Employment Opportunity Unit for copies of the forms and procedures.

(b) Definition.

(1) For purposes of this Section and in accord with federal and State laws, sexual harassment is defined as any unwelcome sexual advance, request for sexual favors and other verbal or physical conduct of a sexual nature or directed at an individual because of his or her sex when:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or

(B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting said individual; or

(C) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(2) Examples of behavior which may, in accord with State and federal laws, constitute sexual harassment, include, but are not limited to, the following:

(A) Acts from male to female, female to male and between individuals of the same sex which are sexual in nature and unwelcome; sexual harassment may be directed against a particular person, persons or group;

(B) Verbal conduct which is sexual in nature and unwelcome, e.g., epithets, jokes, comments or slurs, repeated requests for dates which are unwelcome;

(C) Nonverbal behavior which is sexual in nature and unwelcome, e.g., staring, leering, lewd gestures;

(D) Physical conduct which is sexual in nature and unwelcome, e.g., assault, sexual advances such as touching, patting or pinching, impeding or blocking movement or any physical interference with normal work or movement;

(E) Visual effects which are sexual in nature and unwelcome, e.g., posters or signs, letters, poems, graffiti, faxes, cartoons or drawings, pictures, calendars, electronic mail and computer programs;

(F) Consensual romantic relationships between a supervisor or manager and a subordinate do not constitute sexual harassment per se and are not prohibited by this policy, but may create a potential for conflict or an appearance of impropriety.

(3) For purposes of this Section, retaliation against any official, employee or applicant for employment for having made a good faith complaint or report of sexual harassment, or participating or aiding in an investigation of sexual harassment shall be prohibited. Examples of retaliation may, in accord with State and federal laws, include, but are not limited to, the following:

(A) Transferring the complainant or witness against his or her will;

(B) Ignoring the complainant or witness;

(C) Spreading rumors and innuendoes about the complainant or witness;

(D) Changing work assignments of the complainant or witness without a valid work-related rationale;

(E) Sabotaging of tools, materials or work of the complainant or witness; and

(F) Withholding work-related information from the complainant or witness.

(c) **Right to File Other Complaints.** This policy shall not alter or affect the right of any person to make a charge of discrimination with any State or federal agency with jurisdiction over such claims, file a grievance under a collective bargaining agreement, or consult a private attorney.

(d) **Education and Training.** Prevention is the best tool for the elimination of sexual harassment. All City and County commissions, departments, boards and agencies shall provide to each of their supervisory employees a copy of this ordinance with a written explanation of the most current procedure for filing a complaint. Each appointing officer shall require his or her supervisory personnel to instruct all employees under their supervision of the contents of this ordinance and of the Civil Service and Human Resources Department procedures for filing and processing a complaint. Each appointing officer shall provide to or acquire for its supervisory personnel a periodic training program designed to educate and thereby prevent sexual harassment.

(e) **Department of Human Resources Reports.**

(1) **Quarterly Reports.** The Human Resources Director shall provide, on a quarterly basis, to the Commission on the Status of Women a written report on the number of sexual harassment complaints filed and the departments that were involved. The report also shall include information on the dispositions of complaints that are concluded and the status of complaints that are pending. The reports shall not include names or other identifying information regarding the parties or the alleged harassers.

(2) **Annual Report.** The Human Resources Director shall provide annually to the Mayor, the Board of Supervisors, the Human Rights Com-

mission, and the Commission on the Status of Women a written report on the number of claims of sexual harassment filed, including information on the number of claims pending and the departments in which claims have been filed. The reports shall not include names or other identifying information regarding the parties or the alleged harassers.

(f) **Commission on the Status of Women.** The Commission on the Status of Women is available to offer technical advice on this City and County policy, assistance and referrals for sexual harassment complainants, technical assistance and additional resources to supervisory employees and managers regarding sexual harassment, and to assist in the prevention of sexual harassment incidents.

(g) The City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, any obligations for which it is liable in money damages or otherwise to any person who claims that such breach proximately caused injury. (Added by Ord. 441-96, App. 11/22/96; amended by Ord. 149-00, File No. 000696, App. 6/30/2000)

Sec. 16.9-29.

(Added by Ord. 114-90, App. 4/2/90; amended by Ord. 12-92, App. 1/21/92; Ord. 49-92, App. 2/20/92; Ord. 50-92, App. 2/20/92; Ord. 202-92, App. 7/10/92; Ord. 2-93, App. 1/11/93; Ord. 321-94, App. 9/15/94; Ord. 131-96, App. 4/3/96; Ord. 436-96, App. 11/8/96; Ord. 191-00, File No. 001011, App. 8/11/2000; repealed by Ord. 175-01, File No. 010059, App. 8/17/2001)

**SEC. 16.9-29A. T. J. ANTHONY
EMPLOYEE CATASTROPHIC ILLNESS
PROGRAM—TRANSFER OF SICK LEAVE
AND VACATION CREDITS TO
INDIVIDUAL CATASTROPHICALLY ILL
EMPLOYEES OR TO A POOL OF
CATASTROPHICALLY ILL EMPLOYEES.**

(a) **Purpose.** To enable catastrophically-ill employees to continue to be paid through donations of sick leave and vacation hours from other employees, as authorized by Charter Sections

A8.364 and A8.441. This program shall be known as the Catastrophically Ill Program, or "CIP." This Section only provides for receipt of such credits as are donated and does not provide for an absolute right of continued paid leave.

(b) **Establishment of Pool; Administration and Rule-Making Authority.** There is hereby established a pool into which employees may donate sick leave and/or vacation credits to benefit catastrophically-ill employees. The Controller shall have authority to administer the CIP program, including the authority to make and enforce rules not inconsistent with this Section, with consultation from the Director of Health.

(c) **Definitions.**

(1) A "catastrophic illness" shall mean a life-threatening illness or injury, as determined by the Department of Public Health.

(2) An "active participant" in the CIP is defined as a City employee who has applied for Catastrophic Illness Status and been notified of his or her acceptance in the CIP by the Department of Public Health or its designee and whose participation in the CIP has not terminated, regardless of whether or not the employee has actually received or used any donated sick leave and/or vacation credits.

(d) **Eligibility of Employees To Participate in CIP.** Any employee of the City and County of San Francisco may participate in the CIP if the employee meets all of the following conditions:

- (1) The employee is eligible to accumulate and use sick leave and vacation credits;
- (2) The employee is catastrophically ill;
- (3) The employee has exhausted all of his/her available paid leave; and

(4) The employee does not participate in a short or long-term disability program for which the City pays in whole, directly or indirectly, or if the employee participates in such a program, the employee agrees to, and does, apply for disability benefits immediately upon becoming eligible for such benefits. Any employee who participates in a short or long-term disability program for which the City pays in whole, directly or indirectly, may

participate in the CIP program until the employee receives or is qualified to receive benefits under the terms of a short or long-term disability program for which the City pays in whole, directly or indirectly. Any employee who is receiving or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, may not participate in the CIP program until and unless the employee's disability benefits terminate. Any employee who, while or after participating in the CIP program, retroactively receives or is qualified to receive short or long term disability benefits from a short or long term disability program for which the City pays in whole, directly or indirectly, must reimburse the City for the CIP payments received during the period which the short or long term disability program applies. Failure to do so will result in the City's placing a lien for the unreimbursed amount on the employee's future wages and benefits (not including workers' compensation or retirement.) This paragraph does not apply to employees who are active participants in the CIP as of the effective date of this Amendment and have been active participants since March 29, 2002.

(e) Procedure for Applying for Catastrophic Illness Status.

(1) An employee must complete a prescribed application form and return it to the Department of Public Health, together with supporting medical documentation. The Department of Public Health shall produce and maintain sufficient quantities of the prescribed application for employee access and distribution.

(2) The Department of Public Health or its designee shall examine the documentation supporting the application. The Department of Public Health or its designee may ask the applicant to submit further documentation and/or to submit to examination by a physician that it designates to determine in fact that the applicant does suffer from a catastrophic illness within the meaning of this Section. An applicant's failure to comply with these requirements may be grounds for rejection of the application.

(3) In order to continue to qualify as catastrophically ill, a CIP employee may from time to time be required to submit to specified examination, or to supply further documentation of current medical status, as is necessary in the opinion of the Department of Public Health or its designee; provided, however, that such requests shall not be made for the purpose of harassing said employee. In addition, an employee may be required to submit documentation of application for and/or status of disability benefits.

(4) If the Department of Public Health determines that an employee is not catastrophically ill, the employee shall have a right to appeal the decision through an administrative appeal process to be established by the Health Commission, which shall include the right to a review by the Director of Health and, finally, a hearing before the Health Commission. The Department of Public Health shall provide the employee with a written letter setting forth the reasons for denial and the procedure for filing an administrative appeal. The Health Commission shall promulgate and post the administrative appeal rules within 60 days of the effective date of this ordinance. The administrative appeal process in its entirety shall not exceed 60 days. An employee whose application has been disapproved is not obligated to exhaust the administrative appeals process before reapplying. Instead, the employee may reapply after observing a 30-day waiting period from the date of the initial denial.

(f) Posting of Eligible Recipients.

(1) The Department of Public Health shall assign an exclusive number to each catastrophically ill employee deemed eligible to participate in the CIP.

(2) The Department of Public Health shall maintain, reproduce and post a running list of CIP employees, to be identified only by their exclusive numbers, in order to let transferring employees designate a recipient.

(3) The list may include the amounts of sick leave and vacation credits already transferred or on reserve to each CIP employee.

(4) In all cases, the Department of Public Health and its designees shall shield and protect the true identities of CIP employees.

(g) **Eligibility to Transfer Sick Leave and/or Vacation Credits.** Any employee of the City and County of San Francisco who is eligible to accumulate and use vacation credits and sick leave may transfer sick leave and/or vacation credits to the CIP pool or to an individual CIP employee, subject to the following conditions:

(1) The transferring employee must retain a minimum sick leave balance of 64 hours.

(2) Transfers must be in units of eight hours.

(3) All transfers are irrevocable.

(4) The transferring employee may transfer hours to the CIP (pool or individual) only once per pay period.

(5) The transferring employee may transfer a maximum of 160 hours per pay period, of which no more than 80 hours may be to individual CIP employees.

(6) The transferring employee may transfer a maximum of 480 hours per fiscal year to the pool and to individual CIP employees combined.

(7) Neither a transferring employee nor a CIP employee may be in violation of Subsection (k).

(h) **Use of Transferred Sick Leave and Vacation Credits.**

(1) All hours transferred shall be credited as sick leave for the CIP employee. As they are used, they shall be treated as the employee's own sick leave for all purposes, including for continued accrual of vacation credits, sick leave, and retirement service; service for pay increments; and eligibility for holiday pay.

(2) At the beginning of each pay period, a CIP employee must use all sick leave and vacation credits accrued during the previous pay period before using any transferred hours.

(3) A CIP employee may use transferred hours retroactively from the date of certification of eligibility back to the date of application.

(4) A CIP employee may use transferred credits in a pay period to the extent that when combined with other compensation from the City

and County and all other benefits from public sources, the total does not exceed the pay for 100 percent of the employee's regularly scheduled hours for such pay period (excluding regularly scheduled overtime and premium pay). A CIP employee may be required to provide financial records to prove compliance with this subsection. Failure to provide such records is grounds for exclusion from the CIP.

(i) **Redistribution of Transferred Hours Upon Termination of Participation In CIP.** If a CIP employee dies, retires, resigns or begins receiving disability benefits before having used all hours transferred pursuant to this Section, the unused hours shall be transferred to the CIP pool. If a CIP employee's participation in the CIP expires or is terminated before the employee has used all hours transferred pursuant to this Section, all unused hours in excess of 64 hours shall be transferred to the CIP pool.

(j) **Confidentiality.**

(1) All medical records submitted by an employee pursuant to this statute are to be kept confidential by the Department of Public Health or its designee.

(2) Until the Department of Public Health has rendered its opinion pursuant to Subsection (d) that the employee is catastrophically ill, the fact of an employee's application is to be kept confidential by the parties processing the application and not shared with the employee's department head.

(3) The names of employees donating hours pursuant to this provision are to remain confidential.

(4) Violation of the provisions of this subsection or any other provision relating to confidentiality protections shall be grounds for disciplinary action.

(k) **No Selling or Coercion.**

(1) No individual shall directly or indirectly solicit the receipt of, or accept, any compensation in full or partial exchange, directly or indirectly, for sick leave or vacation credits to be transferred pursuant to this Section.

(2) No individual shall solicit the receipt of, or accept, the transfer of any sick leave or vacation credits pursuant to this Section in full or partial exchange, directly or indirectly, for any compensation.

(3) No individual shall threaten or in any way attempt to coerce an employee with respect to transfer of sick leave or vacation credits pursuant to this Section.

(4) Violation of the provisions of this subsection shall be grounds for termination of participation in the CIP and for disciplinary action.

(l) **Notices.** The Civil Service Commission shall develop notices with relevant information about the CIP. These notices shall be distributed to all appointing officers who shall then post them in public places where other notices advising employees of rights and benefits are posted.

(m) **Termination of this Provision.** Unless otherwise specified by ordinance or Charter provision, the provisions of this Section shall expire upon the effective date of an ordinance or Charter section instituting, or upon the effective date of the last MOU through which all City employees are covered by, a long-term disability program.

(n) **Limitation.** In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 175-01, File No. 010059, App. 8/17/2001; amended by Ord. 34-02, File No. 011741, App. 3/29/2002; ; Ord. 84-04, File No. 040194, App. 5/20/2004

SEC. 16.9-29B. PROGRAM FOR EMPLOYEES WITH CATASTROPHICALLY ILL FAMILY MEMBERS—TRANSFER OF VACATION CREDITS TO INDIVIDUAL EMPLOYEES WITH A CATASTROPHICALLY ILL FAMILY MEMBER.

(a) **Purpose.** To create a program, as authorized by Charter Section A8.441, to allow employees with catastrophically ill family mem-

bers to receive donations of vacation credits to take time off to care for their ill family member. This program shall be known as the Catastrophically Ill Program for Family Members, or "CIP-FM." This Section only provides for receipt of such credits as are donated and does not provide for an absolute right of continued paid leave.

(b) **Administration and Rule-Making Authority.** The Controller shall have authority to administer the CIP-FM program, including the authority to make and enforce rules not inconsistent with this Section, with consultation from the Director of Health.

(c) **Definitions.**

(1) A catastrophic illness shall mean a life-threatening illness or injury, as determined by the Department of Public Health.

(2) "Family member" means a spouse, registered domestic partner, or another dependent as dependent is defined in the Internal Revenue Code (26 U.S.C. sec. 152, as amended from time to time).

(d) **Eligibility of Employee To Participate in CIP-FM Program.** In order to participate in the CIP-FM, an employee must meet all of the following conditions:

(1) The employee must be eligible to accumulate and use sick leave credits;

(2) The employee must have exhausted all of his/her available paid leave;

(3) The employee must have a catastrophically-ill family member; and

(4) The employee must need to take time off from work to care for the catastrophically ill family member.

(e) **Procedure for Applying to Participate in CIP-FM.**

(1) An employee must complete a prescribed application form and return it to the Department of Public Health, together with supporting medical documentation. The Department of Public Health shall produce and maintain sufficient quantities of the prescribed application for employee access and distribution.

(2) The Department of Public Health or its designee shall examine the application and supporting documentation. The Department of Public Health or its designee may ask the employee to submit further documentation or the family member to submit to examination by a physician. Failure to comply with these requirements may be grounds for rejection of the application.

(3) In order for the employee to continue to participate in the program, an employee may from time to time be required to supply further documentation, or the family member may be required to submit to specified examination, as is necessary in the opinion of the Department of Public Health or its designee; provided, however, that such requests shall not be made for the purpose of harassment.

(4) If the Department of Public Health determines that an employee's family member is determined not to be catastrophically ill, the employee shall have a right to appeal the decision through an administrative appeal process to be established by the Health Commission, which shall include the right to a review by the Director of Health and, finally, a hearing before the Health Commission. The Department of Public Health shall provide the employee with written notice setting forth the reasons for denial and the procedure for filing an administrative appeal. The Health Commission shall promulgate and post the administrative appeal rules within 60 days from the effective date of this ordinance. The administrative appeal process in its entirety shall not exceed 60 days. An employee whose application has been disapproved is not obligated to exhaust the administrative appeals process before reapplying. Instead, the employee may reapply after observing a 30-day waiting period from the date of the initial denial.

(f) Posting of Eligible Recipients.

(1) The Department of Public Health shall assign an exclusive number to each employee deemed eligible to participate in the CIP-FM.

(2) The Department of Public Health shall maintain, reproduce and post a running list of CIP-FM employees, to be identified only by their special numbers, in order to let transferring employees designate a recipient.

(3) The list may include the amount of vacation credits already transferred or on reserve to each employee; and

(4) In all cases, the Department of Public Health and its designees shall keep confidential the true identities of CIP-FM employees and their catastrophically ill family member.

(g) Eligibility to Transfer Vacation Credits to Individual CIP-FM Employees. Any employee of the City and County of San Francisco who is eligible to accumulate and use vacation credits may transfer vacation credits to an individual CIP-FM employee, subject to the following conditions:

(1) Transfers must be in units of eight hours;

(2) All transfers are irrevocable;

(3) The transferring employee may transfer hours to the CIP-FM only once per pay period;

(4) The transferring employee may transfer a maximum of 80 hours per pay period;

(5) The transferring employee may transfer a maximum of 480 hours per fiscal year to the CIP-FM program; and

(6) Neither a transferring employee nor a recipient may be in violation of Subsection (k).

(h) Use of Transferred Vacation Credits By a CIP-FM Employee.

(1) All hours transferred shall be credited as sick leave for the CIP-FM employee. As they are used, they shall be treated as use of the employee's own sick leave for all purposes, including for continued accrual of vacation credits, sick leave, and retirement service; service for pay increments; and eligibility for holiday pay.

(2) At the beginning of each pay period, a CIP-FM employee must use all sick leave and vacation credits accrued during the previous pay period before using any transferred hours.

(3) A CIP-FM employee may use transferred credits in a pay period to the extent that when combined with other compensation from the City and County and all other benefits from public sources, the total does not exceed the pay for 100 percent of the employee's regularly scheduled hours for such pay period (excluding regularly scheduled overtime and premium pay). A

CIP-FM employee may be required to provide financial records to prove compliance with this subsection. Failure to provide such records is grounds for exclusion from the CIP-FM and disciplinary action.

(i) **Redistribution of Transferred Hours Upon Termination of Participation in CIP-FM.** If a CIP-FM employee dies, retires, resigns, or otherwise ends participation in the CIP-FM before having used all hours transferred pursuant to this provision, all unused hours in excess of 64 shall be redistributed to other CIP-FM employees.

(j) **Confidentiality.**

(1) All medical records submitted pursuant to this statute are to be kept confidential by the Department of Public Health or its designee;

(2) Until the Department of Public Health has rendered its opinion pursuant to Subsection (d) that an employee's family member is catastrophically ill, the fact of an employee's application is to be kept confidential by the parties processing the application and not shared with the employee's department head.

(3) The names of employees donating hours pursuant to this provision are to remain confidential.

(4) Violation of the provisions of this subsection or any other relating to confidentiality protections shall be grounds for disciplinary action.

(k) **No Selling or Coercion.**

(1) No individual shall directly or indirectly solicit the receipt of, or accept, any compensation in full or partial exchange, directly or indirectly, for vacation credits to be transferred pursuant to this Section.

(2) No individual shall solicit the receipt of, or accept, the transfer of any vacation credits pursuant to this Section in full or partial exchange, directly or indirectly, for any compensation.

(3) No individual shall threaten or in any way attempt to coerce an employee with respect to transfer of vacation credits pursuant to this Section.

(4) Violation of the provisions of this subsection shall be grounds for termination of participation in the CIP-FM and for disciplinary action.

(l) **Notices.** The Civil Service Commission shall develop notices with relevant information about the CIP-FM. These notices shall be distributed to all appointing officers who shall then post them in public places where other notices advising employees of rights and benefits are posted.

(m) **Limitation.** In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 175-01, File No. 010059, App. 8/17/2001)

SEC. 16.9-31. STATE DISABILITY INSURANCE PROGRAM ENROLLMENT.

The Human Resources Director is authorized to take any and all necessary action to enroll qualifying employee classifications in the employee paid State Disability Insurance Program without further approval of the Board of Supervisors. (Added by Ord. 393-97, App. 10/17/97)

ARTICLE II: VACATIONS

Sec. 16.10.	Definitions.		
Sec. 16.11.	Calculation of Vacations.		
Sec. 16.12.	Award and Accrual of Vacation.		
Sec. 16.13.	Effect of Separation Upon Vacation.		
Sec. 16.14.	Vacation Schedules.		
Sec. 16.15.	Use of Partial Vacation to Supplement Disability Leave.		
Sec. 16.16.	Vacation Charges Between Departments.		

	Years of Continuous Service	Maximum Vacation Entitlement
1 through 5 years		80 hours
more than 5 through 15 years....		120 hours
more than 15 years.....		160 hours

SEC. 16.10. DEFINITIONS.

(a) "Continuous service" for vacation allowance purposes means paid service pursuant to a regular work schedule which is not interrupted by a breach in service and shall include periods of unpaid furlough in accordance with a Civil Service Rule governing voluntary and involuntary furloughs.

(b) "Employee" means "Every person employed in the City and County service" which, as used in Charter Section 8.440 includes the classified employees of the City and County of San Francisco as provided in Section 3.661 of the Charter and classified personnel of the San Francisco Unified School District and Community College District, and officers, other than elected officers.

(c) "Irregular work schedule" means a work schedule for which the frequency and length is determined solely by the immediate or imminent needs of the service and which is subject to change at any time. Service in an irregular schedule does not constitute continuous service for vacation purposes.

(d) "Maximum vacation entitlement" means the maximum vacation allowance an employee may earn in any 12 month period. The amount is based on years of continuous service as follows:

(e) "Paid service" means service in paid status with the City and County of San Francisco, the San Francisco Unified School District or the Community College District, as applicable, and includes hours paid as sick leave, vacation, compensatory time-off and overtime for employees who are eligible for overtime pay under the administrative provisions of the Annual Salary Standardization Ordinance.

(f) "Regular work schedule" means a work schedule consisting of a pre-determined and fixed number of hours to be worked on a routine basis and includes an authorized flex-time schedule.

(g) "Temporary disability" means temporary disability pursuant to the Worker's Compensation or State Disability Laws of the State of California or the industrial disability provisions of Charter Sections 8.515 or 8.516.

(h) "Vacation allowance" means the leave with pay for vacation purposes which an employee accrues or is awarded under the terms of this ordinance.

(i) "Vacation with pay" means the compensation the employee would have earned during the vacation period if the employee had worked during the same period, without the inclusion of overtime earnings or special pay.

(j) "Unpaid furlough" means voluntary or involuntary time off without pay imposed or approved in accordance with a Civil Service Rule governing unpaid furloughs in response to a projected budgetary shortfall. (Amended by Ord. 182-85, App. 4/12/85; amended by Ord. 54-93, App. 3/4/93)

SEC. 16.11. CALCULATION OF VACATIONS.

(a) No employee is entitled to a vacation allowance until the employee has completed one year of continuous service.

(b) For purposes of determining the vacation allowance the anniversary date for an employee shall be the first date of employment in the current period of continuous service.

(c) Continuous service shall not be deemed to have been breached:

(1) By an employee because of absence from service due to duly authorized leave; or

(2) By a permanent employee laid off due to lack of work or funds, provided the employee is reappointed to a position in the service with a regular work schedule within five years of lay-off; or

(3) By a permanent school term employee because of a period when schools are not normally in session; or

(4) By a permanent employee who resigns in good standing and is reappointed to a position in the service with a regular work schedule within six months from the effective date of resignation; or

(5) By a temporary or provisional (noncivil service or limited tenure) employee who has completed one year of continuous service and resigns in good standing or is laid off and is reappointed to a position in the service with a regular work schedule within six months from the effective date of resignation or layoff; or

(6) By an employee who has resigned from a position with services certified as other than satisfactory by the appointing officer if the employee is granted reappointment rights by the Civil Service Commission and is reappointed to a position in the service with a regular work schedule within six months from the effective date of resignation;

(7) By a period of voluntary or involuntary furlough without pay imposed or approved in accordance with a Civil Service Rule governing unpaid furloughs in response to a projected budgetary shortfall.

(d) Without regard to any other provisions in this Section, no vacation allowance is earned for paid service in an irregular work schedule.

(e) An employee who has completed one year of continuous service shall accrue vacation allowance at the rate of .0385 of an hour for each hour of qualifying service. An employee who has completed five years of continuous service shall accrue thereafter a vacation allowance at a rate of .0577 of an hour for each hour of paid service. An employee who has completed 15 years of continuous service shall accrue a vacation allowance a rate of .077 of an hour for each hour of paid service.

(f) No employee shall be credited with more than 2080 hours of paid service in any 12 month period for purposes of computing the vacation allowance.

(g) The vacation allowance for an employee receiving temporary disability benefits shall be computed on the basis of the number of hours in the employee's regular work schedule; provided, however, that an employee not supplementing State Disability Insurance payments with earnings from paid service will not accrue a vacation allowance during the period of disability. An employee who has received a permanent disability award and who does not return to employment because of such disability is not entitled to accrue a vacation allowance.

(h) For members of the uniformed force of the Fire Department, the factors for earning vacation allowance, the maximum number of hours credited for vacation allowance purposes and the maximum number of vacation hours an employee may accrue shall be administered in a manner consistent with the intent of this ordinance and approved by the General Manager, Personnel. In addition, if necessary because of minimum daily staffing requirements and the financial and scheduling problems created in bringing the uniformed force into conformity with Section 16.12(e) and (f), the Fire Department may establish an alternative schedule or other means for decreasing in an equitable manner the maximum accrual of vacation allowance to an amount consistent with that permitted

other City employees under Section 16.12(e) no later than December 31, 1989. If the Fire Department establishes an alternative schedule, it may not permit a member of the uniformed force to accrue vacation days or hours in excess of the following:

Years of Continuous Service	Maximum Accrual
1 through 5 years	50 days or 400 hours
more than 5 years through 15 years.....	60 days or 480 hours
more than 15 years	70 days or 560 hours

(i) Any dispute over whether an employee is assigned to a regular or an irregular work schedule shall be finally decided by the Civil Service Commission. (Amended by Ord. 182-85, App. 4/12/85; Ord. 54-93, App. 3/4/93)

SEC. 16.12. AWARD AND ACCRUAL OF VACATION.

(a) Beginning with the first full pay period after the effective date of this ordinance, an employee shall be awarded the employee's vacation allowance on the first day of the pay period following the pay period in which the allowance is accrued.

(b) An employee does not accrue vacation allowance in the first year of continuous service, however, at the end of one year of continuous service, an employee shall be awarded a vacation allowance computed at the rate of .0385 of an hour for each hour of paid service in the preceding year.

(c) At the end of five years of continuous service, an employee shall be awarded a one-time vacation allowance computed at the rate of .01924 of an hour for each hour of paid service in the preceding year except that the amount of the vacation allowance shall not exceed 40 hours.

(d) At the end of fifteen years of continuous service, an employee shall be awarded a one-time vacation allowance computed at the rate of

.01924 of an hour for each hour of paid service in the preceding year except that the amount of the vacation allowance shall not exceed 40 hours.

(e) The maximum number of vacation hours an employee may accrue consists of 240 hours carried forward from prior years plus the employee's maximum vacation entitlement which is based on the number of years of service. The maximum number of vacation hours which an employee may accrue is as follows:

Years of Continuous Service	Maximum Accrual
1 through 5 years	320 hours
more than 5 through 15 years....	360 hours
more than 15 years.....	400 hours

(f) On the first day of the second pay period following the effective date of this ordinance, employees shall be awarded any vacation allowance accrued between January 1, 1985, and the first day of the second pay period following the effective date of this ordinance. In order to prevent employees from unfairly losing accrued vacation allowance in the transition from an award date of January 1st of each year, the limitation on the number of vacation hours an employee may accrue as set forth in Subsection 16.12(e) shall not apply between the effective date of this ordinance and January 9, 1987. Vacation allowance hours in excess of those set forth in Section 16.12(e) will be lost if not used before January 9, 1987. (Amended by Ord. 97-86, App. 3/27/86)

SEC. 16.13. EFFECT OF SEPARATION UPON VACATION.

An employee in the final year of service may with the approval of the appointing officer elect to receive a cash payment in lieu of vacation due at the time of separation, provided that the appointment and payment of a replacement for the period of time representing such cash payment in lieu of vacation is not required. In lieu of such cash payment an employee who separates from City and County service and who without interruption in service is appointed to any governmental agency whose employees are eligible for membership in the San Francisco City and

County Retirement System may elect to transfer such accumulated vacation to such agency if the agency rule or regulation permits the crediting of such accumulated vacation. (Amended by Ord. 182-85, App. 4/12/85)

SEC. 16.14. VACATION SCHEDULES.

(a) Appointing officers are responsible for approving vacation schedules. In approving vacation schedules, the appointing officers shall give due regard to employee seniority and preference and the needs of the service. Unless an emergency situation exists requiring the immediate presence of an employee, an employee shall be allowed to begin a vacation on the day immediately following the employee's normal day off.

(b) With the approval of the appointing officer, an employee's vacation allowance may be taken in increments of not less than one hour.

(c) Except as requested by the employee to supplement disability benefits, the vacation allowance of an employee, who has started a vacation and who suffers a nonindustrial injury or illness or a recurrence of an industrial injury or illness during such vacation and who is entitled to and receives temporary disability benefits, shall not be charged for periods in which the employee receives disability benefits.

(d) Every department shall maintain records which shall include, in addition to all other information required by the Civil Service Commission and Controller, the employee's accrued vacation allowance. When an employee accepts a permanent appointment to another department, the employee's vacation and sick leave records shall be transferred by the first department to the second department. Ninety calendar days after an automated payroll/personnel data system is fully implemented in a department, and, upon approval of the General Manager, Personnel, and the Controller, the maintenance of such records by the department shall no longer be required. All records shall, however, continue to be preserved according to present statutory requirements. (Amended by Ord. 182-85, App. 4/12/85)

SEC. 16.15. USE OF PARTIAL VACATION TO SUPPLEMENT DISABILITY LEAVE.

An employee who is absent from duty because of temporary disability may use his or her vacation allowance to supplement disability benefits; provided, that when the vacation allowance payment is added to the disability benefits payable under the Workers' Compensation or State Disability Insurance Laws, the employee's bi-weekly payment will not exceed the normal salary of the employee for the regular work schedule effective at the commencement of the disability. An employee desiring to use his or her vacation allowance to supplement State Disability Insurance benefits shall, within seven calendar days following the first day of absence, and on a form provided by the Civil Service Commission, so inform his or her appointing officer or designated representative. Notwithstanding the foregoing, an employee receiving temporary workers' compensation disability benefits may accrue vacation hours in excess of the maximum accrual permitted pursuant to Section 16.12(e). Upon the cessation of the employee's receipt of temporary disability benefits the employee shall receive a cash payment for any vacation hours accrued in excess of the number the employee was permitted to accrue pursuant to Section 16.12(e). (Amended by Ord. 182-85, App. 4/12/85)

SEC. 16.16. VACATION CHARGES BETWEEN DEPARTMENTS.

The Controller shall establish procedures for the method of payment of salaries to employees entitled to vacation from service in two or more departments of the City and County. (Added by Ord. 316-81, App. 6/19/81)

ARTICLE III: [RESERVED]

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ARTICLE IV: RETIREMENT

- Sec. 16.29. Definitions.
- Sec. 16.29-1. Definitions—Actuarial Equivalent.
- Sec. 16.29-2. Definitions—Annuity.
- Sec. 16.29-3. Definitions—Beneficiary.
- Sec. 16.29-4. Definitions—Board.
- Sec. 16.29-5. Definitions—City.
- Sec. 16.29-6. Definitions—City and County Service.
- Sec. 16.29-7. Definitions—Types of Compensation.
- Sec. 16.29-7.1. Definitions—Compensation as Distinguished from Benefits.
- Sec. 16.29-7.2. Definitions—Compensation Earnable by a Member.
- Sec. 16.29-7.3. Definitions—Final Compensation.
- Sec. 16.29-7.4. Definitions—Compensation Paid in Lieu of Vacation Excluded.
- Sec. 16.29-7.5. Adoption of Internal Revenue Code Section 401(a)(17) Limitations.
- Sec. 16.29-8. Definitions—Continuous Service.
- Sec. 16.29-9. Definitions—Types of Contributions.
- Sec. 16.29-9.1. Definitions—Accumulated Additional Contributions.
- Sec. 16.29-9.2. Definitions—Accumulated Contributions.
- Sec. 16.29-9.3. Definitions—Accumulated Normal Contributions.
- Sec. 16.29-9.4. Definitions—Additional Contributions.
- Sec. 16.29-9.5. Definitions—Normal Contributions.
- Sec. 16.29-9.6. Definitions—Prior Contributions.
- Sec. 16.29-9.7. Definitions—Accumulated Prior Contributions.
- Sec. 16.29-9.8. Definitions—Retroactive Contributions.
- Sec. 16.29-9.9. Definitions—Accumulated Retroactive Contributions.
- Sec. 16.29-10. Definitions—Death Allowance.
- Sec. 16.29-11. Definitions—Employee.
- Sec. 16.29-12. Definitions—Member.
- Sec. 16.29-13. Definitions—Member or Police Department or Member of Fire Department.
- Sec. 16.29-14. Definitions—Pension.
- Sec. 16.29-15.1. Definitions—Teachers.
- Sec. 16.29-15.2. Definitions—Members of Police or Fire Departments.
- Sec. 16.29-15.10. Definitions—Employees of the Health Service System Prior to December 1, 1940.
- Sec. 16.29-15.11. Definitions—Excluded Because of Employment in Temporary Position.
- Sec. 16.29-15.12. Definitions—Prior Service in a Part-Time Position.
- Sec. 16.29-16. Definitions—Regular Interest.
- Sec. 16.29-17. Definitions—Retirement Allowance.
- Sec. 16.29-20. Definitions—School Department.
- Sec. 16.29-21. Definitions—Teacher.
- Sec. 16.29-22. Definitions—Charter.
- Sec. 16.29-23. Definitions—Gender and Number.
- Sec. 16.30-1. Meaning of "Average Final Compensation."
- Sec. 16.32. Benefits Not Subject to Garnishment, Etc., and Are Nonassignable.
- Sec. 16.33. Compensation for Witnesses Appearing Before Board.
- Sec. 16.34. Time to Apply for Benefits After Death of Member.

- Sec. 16.37. Powers and Duties Generally of Retirement Board.
- Sec. 16.37-1. Interest Rates.
- Sec. 16.37-2. Actuarial Valuation.
- Sec. 16.37-3. Records as to Accumulated Contributions.
- Sec. 16.37-4. Determination of Service Credit..
- Sec. 16.37-4.1. Determination of Service Credit for Certain Employees of the San Francisco Unified School District.
- Sec. 16.37-5. Prior Service Credit.
- Sec. 16.37-6. Calculation of Service Credit.
- Sec. 16.37-7. Calculation of Service Credit Based on Part-time Services.
- Sec. 16.37-8. Excess Retirement Benefits.
- Sec. 16.37-9. Power to Issue Subpoenas.
- Sec. 16.38. Estimates by Board of Length of Service, Etc.
- Sec. 16.41. Controller's Annual Audit.
- Sec. 16.42. Persons Included in the System.
- Sec. 16.43-1. Prior Service Credit; Employees on Hetch Hetchy Project.
- Sec. 16.44. Department Head to Notify of Change of Status of Members.
- Sec. 16.45. Duties Generally of Members and Beneficiaries.
- Sec. 16.46. When Membership Ceases.
- Sec. 16.47. Withdrawals and Redeposits.
- Sec. 16.48. Payments after Re-Entry into System.
- Sec. 16.49. Benefits to Members Under Prior Systems Continued.
- Sec. 16.52. Effect of Change of Police or Fire Department Member to Another Department.
- Sec. 16.54. Deduction of Members' Contributions; Acceptance of Cash Payments.
- Sec. 16.55. Additional Contributions.
- Sec. 16.55-1. Definition of "Public Service."
- Sec. 16.55-2. Election to Contribute and Receive Credit for Public Service.
- Sec. 16.55-3. Contributions for Public Service Credit.
- Sec. 16.55-4. Credit in Retirement System for Public Service.
- Sec. 16.55-5. Rules and Regulations.
- Sec. 16.55-6. Reciprocal Benefits.
- Sec. 16.55-7. Internal Reciprocity of Pension Benefits Within the Retirement System.
- Sec. 16.56. Withdrawal of Accumulated Additional Contributions Made Pursuant to Section 16.55-5.
- Sec. 16.61-1. Implementation of Internal Revenue Code Section 414(h)(2).
- Sec. 16.61-2. Adoption of Internal Revenue Code Section 415 Limitations.
- Sec. 16.61-3. Adoption of Internal Revenue Code Section 401 Limitations.
- Sec. 16.61-4. Pre-Tax Treatment of Buy Backs.
- Sec. 16.61-5. Acceptance of Rollovers and Transfers.
- Sec. 16.62. Establishment of a Supplemental Tax Deferred Plan.
- Sec. 16.62-1. Purpose.
- Sec. 16.62-2. Administration by Retirement Board.
- Sec. 16.62-3. Administrative Costs.
- Sec. 16.67. Payments into Fund Made Obligation of City; Appropriations to Cover Obligation.
- Sec. 16.70-1. Optional Allowances Upon Retirement.
- Sec. 16.70-3. Retirement after 3/31/66 under Paragraph (b) of Section 16.70-1.
- Sec. 16.70-4. Allowance Payable for Time Commencing 7/1/74.
- Sec. 16.71. Disability Retirement—Medical Grounds.
- Sec. 16.74. Disability Retirement—Medical Examinations; Re-Entry into

- Service; Engaging in Gainful Occupation after Retirement Period.
- Sec. 16.75. Optional Modifications of Allowances.
- Sec. 16.75-1. Optional Modification of Benefits for Former Spouse.
- Sec. 16.76. Method of Payment of Allowances.
- Sec. 16.77. Position in City Service Not Permitted after Retirement; Exceptions.
- Sec. 16.79. Beneficiaries.
- Sec. 16.80. Death Benefits.
- Sec. 16.80-1. Death After Retirement—Persons Retired Prior to April 1, 1966.
- Sec. 16.80-2. Death After Retirement—Persons Retired Prior to April 1, 1966.
- Sec. 16.80-3. Death After Retirement—Persons Retired Prior to April 1, 1966, who Died Prior to Effective Date of Section 16.80-1.
- Sec. 16.80-4. Retirement Allowance Under Optional Payment Plan No. 2 or No. 3.
- Sec. 16.80-5. Death After Retirement—Allowances Payable Without Modification or Pursuant to Options 1 or 2.
- Sec. 16.80-6. Death After Retirement—Continuation to Surviving Spouse of Female Member.
- Sec. 16.80-6.1. Death After Retirement—Continuation to Husband of Retired Female Member who Died Prior to Effective Date of Section 16.80-6.
- Sec. 16.80-7. Retirement Allowance of Female with Surviving Spouse.
- Sec. 16.81. Benefits Under Public Employees' Retirement System.
- Sec. 16.82. Administration of Benefits Under Workers' Compensation Act.
- Sec. 16.84. Effect of Compensation Benefits on Other Benefits Under Article.
- Sec. 16.85. Policemen and Firemen Incapacitated with Heart Trouble or Pneumonia—When Presumed Contracted in Course of Employment.
- Sec. 16.86. Policemen and Firemen Incapacitated with Heart Trouble or Pneumonia—Application to Members with Five or More Years of Service.
- Sec. 16.87. Waiver of Pensions—Signing and Filing; Effective Date; Waiver Forms.
- Sec. 16.88-1. Conditions under Section 210(L) of Federal Social Security Act.
- Sec. 16.88-2. Member's Option.
- Sec. 16.88-3. Member Covered Under Federal Social Security.
- Sec. 16.88-4. Member's Right to Reduce Contributions.
- Sec. 16.88-5. Allowance Reduced.
- Sec. 16.88-6. Effective Date of Coverage Under Social Security Retroactive.
- Sec. 16.88-7. Retirement before Minimum Age Under Social Security.
- Sec. 16.89-1. [Reserved]
- Sec. 16.89-2. [Reserved]
- Sec. 16.89-3. Purpose.
- Sec. 16.89-4. Persons Affected.
- Sec. 16.89-5. Election by Person Who "Vested."
- Sec. 16.89-6. Health Service System Coverage.
- Sec. 16.89-7. Death Benefit.
- Sec. 16.89-8. Health Service System Coverage—Post 6/30/72 Teachers.
- Sec. 16.89-9. Election for Refund—Benefits for Credited Service.
- Sec. 16.89-10. Funds to be Deposited with State Teachers' Retirement System.

Sec. 16.89-11. Service Credit—Post 6/30/72 Teachers.

Sec. 16.89-12. Permanent Fund Benefit.

Sec. 16.89-13. Authority of General Manager.

Sec. 16.89-14. Redeposit.

SEC. 16.29. DEFINITIONS.

The words and phrases as used in this Article and for the purposes of this Article, unless a different meaning is plainly required by context, shall have the meaning respectively ascribed to them in Sections 16.29-1 through 16.29-23. (Amended by Ord. 299-64, App. 11/9/64)

SEC. 16.29-1. DEFINITIONS—ACTUARIAL EQUIVALENT.

Actuarial equivalent shall mean a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board, and regular interest. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-2. DEFINITIONS—ANNUITY.

Annuity shall mean equal monthly payments for life derived from contributions made by a member. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-3. DEFINITIONS—BENEFICIARY.

Beneficiary shall mean any person in receipt of a retirement allowance, a death benefit or any other benefit from the retirement system. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-4. DEFINITIONS—BOARD.

Board shall mean "retirement board" as created in Section 3.670 of the Charter. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-5. DEFINITIONS—CITY.

City shall mean "City and County of San Francisco," the "San Francisco Unified School District," the "San Francisco Community College District," or the "Superior Court of California, County of San Francisco." (Added by Ord. 299-64, App. 11/9/64; amended by Ord. 147-99, File No. 990045, App. 6/2/99; Ord. 179-01, File No. 010942, App. 8/17/2001)

SEC. 16.29-6. DEFINITIONS—CITY AND COUNTY SERVICE.

City and County service shall mean service rendered as an employee of the City and County for compensation. For the purposes of the retirement system a member shall be considered as being in the City and County service only while he is receiving compensation from the City and County for such service; provided, however, that any person heretofore appointed to the position of Fire Marshall, who, at the time of his appointment, was a member of the uniform rank of the Fire Department and was at the same time entitled to the benefits of the Fireman's Relief Fund, as provided for in Chapter VII of Article IX of the Charter which has been superseded by the present Charter; and who did not avail himself of the privileges permitted by Subsection (f) of Section 8.565 of the present Charter, shall as long as he occupies the position of Fire Marshal be deemed to be in the City and County service and shall continue to be a member of the retirement system as provided in Section 8.565 of the present Charter and to enjoy the same rights, privileges and benefits from such system as he would have enjoyed had he not been appointed to the position of Fire Marshal and had continued to serve in the position in the department which he was legally occupying at the time of his appointment to the position of Fire Marshal. His dependents shall be entitled to all the rights, benefits and privileges provided for in Section 8.565 of the present Charter. The amount of the benefit which such person or his dependents shall be entitled to shall be in accordance with the compensation attached to the position which he occupied in the Fire Department at the time of the appointment to the position of Fire Marshal. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-7. DEFINITIONS—TYPES OF COMPENSATION.

The various types of compensation are as set forth in Sections 16.29-7.1 through 16.29-7.4. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-7.1. DEFINITIONS—COMPENSATION AS DISTINGUISHED FROM BENEFITS.

Compensation, as distinguished from benefits under the workers' compensation, insur-

ance and safety law of the State, shall mean the remuneration payable in cash by the City and County, plus the monetary value—as determined by the Board of Supervisors; or, if that board shall not have so determined, then by the Retirement Board—of board, lodging, fuel, laundry and other advantages allowed as remuneration by the City and County. The "compensation" during any fiscal year received by a person as a teacher shall be taken as such an amount as shall bear the same proportion to the total remuneration paid to such teacher by the San Francisco School Department during such fiscal year as the amount contributed during the previous fiscal year by the City and County to the common school fund bears to the total amount contributed to the common school fund during the previous fiscal year by the City and County and by the State. (Added by Ord. 299-64, App. 11/9/64; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

**SEC. 16.29-7.2. DEFINITIONS—
COMPENSATION EARNABLE BY A
MEMBER.**

Compensation earnable by a member shall mean the compensation as determined by the Retirement Board, which would have been earned by the member had he worked throughout the period under consideration the average number of days ordinarily worked by persons in the same grade or class of positions as the positions held by said member during such period, and at the rates of pay attached to such positions, it being assumed that during any absence said member was in the position held at the beginning of the absence, and that prior to entering City and County service said member was in the position first held by him in City and County service.

In the calculation of benefits, however, payable because of death or retirement of a member of the Fire or Police Department as a result of injuries incurred in performance of duty, "compensation earnable" shall be based on the assumption that prior to becoming a member of the department, the person so retired or dead was in the position first held by said person in the department. (Added by Ord. 299-64, App. 11/9/64; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

**SEC. 16.29-7.3. DEFINITIONS—FINAL
COMPENSATION.**

Final compensation shall mean the average monthly compensation earnable by a member during the 10 years immediately preceding his or her retirement. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.29-7.4. DEFINITIONS—
COMPENSATION PAID IN LIEU OF
VACATION EXCLUDED.**

When the compensation of a member is a factor in any computation to be made under the Retirement System, there shall be excluded from such computation any compensation paid in lieu of vacation or sick leave. (Amended by Ord. 270-81, App. 5/21/81)

**SEC. 16.29-7.5. ADOPTION OF
INTERNAL REVENUE CODE SECTION
401(a)(17) LIMITATIONS.**

Notwithstanding any other provision of the Charter or Administrative Code, compensation for the purpose of computing benefits and contributions for any person who becomes a member of the retirement system on or after July 1, 1996 shall be subject to the limitations set forth in Section 401(a)(17) of the Internal Revenue Code as adjusted from time to time by the Secretary of the Treasury to reflect increases in the cost of living. (Added by Ord. 57-96, App. 2/9/96)

**SEC. 16.29-8. DEFINITIONS—
CONTINUOUS SERVICE.**

Continuous service shall mean uninterrupted City and County service, except that discontinuance of City and County service from any cause whatsoever followed by re-entrance into City and County service within three years from the date of such discontinuance shall not be considered as a break in the continuity of service; and except that any absence from City and County service by reason of service in the military or naval forces of the United States in any war in which the United States has engaged or may become engaged shall not be considered as a break in City and County service. The period of such absence shall count as City and County service,

but time during which a person otherwise than because of such service has been or shall be absent for any reason from City and County service shall not be included in calculating any benefit under the Retirement System or in determining whether a member qualifies for retirement. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-9. DEFINITIONS—TYPES OF CONTRIBUTIONS.

The various types of contributions are as set forth in Sections 16.29-9.1 through 16.29-9.7. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-9.1. DEFINITIONS—ACCUMULATED ADDITIONAL CONTRIBUTIONS.

Accumulated additional contributions shall mean the sum of all the additional contributions, deducted from the compensation of a member standing to the credit of his or her individual account, together with regular interest thereon. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-9.2. DEFINITIONS—ACCUMULATED CONTRIBUTIONS.

Accumulated contributions shall mean accumulated normal contributions, plus accumulated additional contributions, plus accumulated prior contributions, plus accumulated retroactive contributions, plus such contributions, with interest, as may have been made at the rate of \$2 per month. (Amended by Ord. 65-65, App. 3/19/65)

SEC. 16.29-9.3. DEFINITIONS—ACCUMULATED NORMAL CONTRIBUTIONS.

Accumulated normal contributions shall mean the sum of all the normal contributions deducted from the compensation of a member, standing to the credit of his individual account, together with regular interest thereon. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-9.4. DEFINITIONS—ADDITIONAL CONTRIBUTIONS.

Additional contributions shall mean contributions at the rates provided for in Section 16.55 of this Code. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-9.5. DEFINITIONS—NORMAL CONTRIBUTIONS.

Normal contributions shall mean contributions made by members at the rates provided for by Charter or this Code, and contributions made by members who exercised the election provided in Section 16.70-1 of this Code on account of compensation earned after June 30, 1965, at the rates provided for in paragraph (3) of said Section 16.70-1. (Amended by Ord. 65-65, App. 3/19/65; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.29-9.6. DEFINITIONS—PRIOR CONTRIBUTIONS.

Prior contributions shall mean contributions to the retirement system made by members in accordance with this Code. (Added by Ord. 299-64, App. 11-9-64; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.29-9.7. DEFINITIONS—ACCUMULATED PRIOR CONTRIBUTIONS.

Accumulated prior contributions shall mean the sum of all the prior contributions standing to the credit of a member's individual account, together with regular interest thereon. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-9.8. DEFINITIONS—RETROACTIVE CONTRIBUTIONS.

Retroactive contributions shall mean contributions made by members in accordance with paragraph (1) of Section 16.70-1 of this Code for time prior to July 1, 1965. (Added by Ord. 65-65 App. 3/19/65)

SEC. 16.29-9.9. DEFINITIONS—ACCUMULATED RETROACTIVE CONTRIBUTIONS.

Accumulated retroactive contributions shall mean the retroactive contributions and interest thereon standing to the credit of a member's individual account. (Added by Ord. 65-65, App. 3/19/65)

SEC. 16.29-10. DEFINITIONS—DEATH ALLOWANCE.

Death allowance shall mean payments for the life, or until remarriage, or until youngest child shall attain the age of 16 years, as provided in Section 16.80 of this Code. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-11. DEFINITIONS—EMPLOYEE.

Employee shall mean any person who occupies a position created by or which is under the jurisdiction of the City and County, whose compensation is paid by the City and County, and who is under the control of the City and County as to employment, direction and discharge. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-12. DEFINITIONS—MEMBER.

Member shall mean any person included in the membership of the retirement system as provided in Section 16.42 of this Code. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-13. DEFINITIONS—MEMBER OF POLICE DEPARTMENT OR MEMBER OF FIRE DEPARTMENT.

Member of Police Department or member of Fire Department shall mean any officer or employee of the City and County Police or Fire Departments, respectively, whose employment therein began prior to January 1, 1900, or whose employment therein began or shall begin after that date and was or shall be subject to a Charter maximum age at the time of employment of 35 years. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-14. DEFINITIONS—PENSION.

Pension shall mean equal monthly payments for life derived from contributions made by the City and County as provided by this Article. (Added by Ord. 299-64, App. 11/9/64)

Sec. 16.29-15.

(Added by Ord. 299-64, App. 11/9/64; repealed by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.29-15.1. DEFINITIONS—TEACHERS.

Prior service as applied to persons employed as teachers at the time of their entry into the Retirement System, and persons, as former teachers, to whom or on account to whose death payments are made by the Retirement System under Section 16.49 of this Code, shall mean City and County service, excluding City and County service as a member of the San Francisco City and County Employees' Retirement System, rendered before October 1, 1925. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-15.2. DEFINITIONS—MEMBERS OF POLICE OR FIRE DEPARTMENTS.

Prior service as applied to persons who were members of the Police or Fire Department on January 8, 1932, persons employed by the Board of Trustees of the Police Relief and Pension Fund on such date and former members of such departments, to whom or on account of whose death, payments by the Retirement System are made under Sections 8.542 and 8.566 of the Charter shall mean City and County service rendered as members of the City and County Police or Fire Department, or as employees of such board, respectively, before January 8, 1932. (Added by Ord. 299-64, App. 11/9/64)

SEC. 16.29-15.10. DEFINITIONS—EMPLOYEES OF THE HEALTH SERVICE SYSTEM PRIOR TO DECEMBER 1, 1940.

Prior service as applied to persons who are members under Section 8.507 of the Charter shall mean service rendered as employees of the Health Service System of the City and County of San Francisco prior to December 1, 1940. (Added by Ord. 79-65, App. 4/7/65)

SEC. 16.29-15.11. DEFINITIONS—EXCLUDED BECAUSE OF EMPLOYMENT IN TEMPORARY POSITION.

Prior service, as applied to persons who are members under Section 8.507 of the Charter and who were excluded from membership because of their employment in City and County service in

a temporary position, shall mean aggregate City and County service, regardless of breaks in such service, rendered while so excluded on account of such employment. As an exception to the provisions contained in former Section 16.63 of this Code, however, service shall be credited under this paragraph only if the member elects prior to the effective date of retirement to contribute, and does contribute, prior to the effective date of retirement, in a manner and at times approved by the Retirement Board, an amount equal to contributions determined by applying, to the compensation earned by him in such service, the rate of contribution first applicable to him upon commencement of his membership in the Retirement System. All contributions made pursuant to this paragraph shall be administered in the manner provided herein for normal contributions, except that the annuity provided upon retirement of the member, by such contributions, plus credited interest, shall not be matched by the City and County, and instead, such annuity shall be deducted from the pension payable to such member on account of prior service. Only the remainder of such prior service pension shall be payable from contributions of the City and County. It is hereby declared to be the intent of this paragraph that the provisions for prior service credit contained herein would not have been enacted without the condition expressed herein requiring that any recipient of such prior service credit must actually pay the amount provided for herein in conformity with the provisions hereof. In absence of strict compliance with such provision for payment by the recipient, this paragraph shall be ineffective. (Added by Ord. 272-67, App. 10/17/67; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.29-15.12. DEFINITIONS—PRIOR SERVICE IN A PART-TIME POSITION.

Prior service, as applied to persons who are members under Section 8.507 of the Charter on the effective date of this ordinance or who retired on or after July 1, 1973, as members under Section 8.507, and who were excluded from membership because of their employment in City and County service in a part-time position, shall

mean aggregate City and County service, regardless of breaks in such service, rendered while so excluded on account of such employment. Such part-time service shall be credited only under the condition that it can be verified from a regular City and County payroll or time roll; provided, however, that if it is determined by the Retirement Board that payrolls or time rolls relating to such service were not prepared or have been lost or destroyed, the Retirement Board may determine the periods of such service and the compensation attributable thereto upon presentation of such evidence as it considers appropriate and reliable.

As an exception to the provisions contained in former Section 16.63 of this Code, however, service shall be credited under this Section only if the member so elects on or before February 7, 1975, in the event he is a member on said effective date or in the event he retired on or after July 1, 1973, and, prior to said effective date, or within 90 days after date of membership in the event he becomes a member after the effective date of this Section, and does contribute in a manner and at times approved by the Retirement Board, an amount equal to contributions determined by applying to the compensation earned by him in such service the rate of contribution first applicable upon commencement of his membership in the Retirement System, together with the interest which would have accrued on such contributions if they had been made on the effective date of his membership, from that date until completion of payments of those contributions at the rate of interest currently being used from time to time under the system.

All contributions made pursuant to this Section shall be administered in the manner provided herein for normal contributions, except that the annuity provided upon retirement of the member, by such contributions, plus credited interest, shall not be matched by the City and County, and instead, such annuity shall be deducted from the pension payable to such member on account of prior service, and only the remainder of such prior service pension shall be payable from contributions of the City and County.

It is hereby declared to be the intent of this Section that the provision for prior service credit contained herein would not have been enacted without the condition expressed herein requiring that any recipient of such prior service must actually pay the amount provided for herein, in conformity with the provisions hereof; and, in the absence of strict compliance with such provision for payment by the recipient this Section shall be ineffective. (Amended by Ord. 210-75, App. 5/21/75; Ord. 326-00, File No. 001921, App. 12/28/2000)

**SEC. 16.29-16. DEFINITIONS—
REGULAR INTEREST.**

Regular interest shall mean interest at four percent per annum compounded at each June 30th, subject to the provisions of Section 16.37-2 of this Code, plus such additional interest as the Retirement Board may declare from year to year as provided herein. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.29-17. DEFINITIONS—
RETIREMENT ALLOWANCE.**

Retirement allowance shall mean the pension plus the annuity. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.29-20. DEFINITIONS—SCHOOL
DEPARTMENT.**

School Department shall mean the School District of the City and County. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.29-21. DEFINITIONS—
TEACHER.**

Teacher shall mean any person employed by the School District of the City and County who is entitled also to retirement benefits provided by the state under the California Public School Teachers' Retirement Salary Fund or its successor. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.29-22. DEFINITIONS—
CHARTER.**

The Charter shall mean the charter adopted by the voters of the City and County of San

Francisco on March 26, 1931, and ratified by the Legislature on April 13, 1931. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.29-23. DEFINITIONS—GENDER
AND NUMBER.**

Gender and number. Words used in the masculine gender shall include the feminine and neuter genders, and singular numbers shall include the plural, and the plural the singular. (Added by Ord. 299-64, App. 11/9/64)

**SEC. 16.30-1. MEANING OF "AVERAGE
FINAL COMPENSATION."**

(a) The meaning of "average final compensation" as stated in Subsection (A) Section 8.509 of the Charter is hereby changed pursuant to the authority granted therein, and is hereby declared to be the average monthly compensation earned by a member during any year of credited service in the Retirement System in which his average earned compensation is the highest. The change in meaning of "average final compensation" provided herein shall be effective only with respect to retirement allowances which, under the provisions of said Section 8.509, are based upon average final compensation and which are first effective on or after January 1, 1972.

This Subsection (a) does not give any member or the beneficiary of any member, or his successors in interest, any claim against the City and County for an increase in any retirement allowance payable to or on account of any member whose retirement allowance was effective prior to January 1, 1972.

(b) Notwithstanding the provisions of Subsection (a) of this Section and only with respect to members whose service credit is determined pursuant to the provisions of Section 16.37-4.1 of this Code, "average final compensation" shall mean the average monthly compensation earned by such member in the months actually worked during the fiscal year in which his average monthly earned compensation is the highest. (Amended by Ord. 349-72, App. 12/11/72)

SEC. 16.32. BENEFITS NOT SUBJECT TO GARNISHMENT, ETC., AND ARE NONASSIGNABLE.

The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right or benefit accrued or accruing to any person under the provisions of this Article and the moneys in the fund created by this Article shall not be subject to execution, garnishment, attachment or any other process whatsoever and shall be unassignable, except as specifically provided by this Article. (Bill No. 1125, Ord. 4073(C.S.), Sec. 5)

SEC. 16.33. COMPENSATION FOR WITNESSES APPEARING BEFORE BOARD.

Any witness called by the Retirement Board in any proceedings before said board may be compensated for his time or reimbursed in the amount of expenses and loss of wages or salary suffered by him because of such call, as determined by rule of such board. (Ord. No. 1210(1939), Sec. 1)

SEC. 16.34. TIME TO APPLY FOR BENEFITS AFTER DEATH OF MEMBER.

Proceedings before the Retirement Board for the collection of benefits provided under the Retirement System, upon the death of a member or beneficiary, must be commenced within one year from the date of death, or from the date of appointment of a guardian or trustee of the person to whom the benefits would be payable, if such person is incompetent or under 21 years of age. (Bill No. 1125, Ord. No. 4.073(C.S), Sec. 7)

SEC. 16.37. POWERS AND DUTIES GENERALLY OF RETIREMENT BOARD.

The management and control of the Retirement System shall be vested in the Retirement Board as provided in Section 12.100 of the Charter. The Board shall exercise the powers and perform the duties conferred on it by the Charter and by other sections of this Code, and in addi-

tion thereto as set forth in Sections 16.37-1 through 16.37-7. (Amended by Ord. 299-64, App. 11/9/64; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.37-1. INTEREST RATES.

Upon the basis of an investigation or valuation, the Retirement Board shall adopt appropriate interest rates. The interest rate applied to member accounts shall be at least four percent per annum and shall not exceed the actuarial assumption for return on assets.

The Retirement Board, by means of a dividend payment method, may distribute annually to those persons receiving allowances from the Retirement System—which are not subject to change when the salary rates of active members change and which at the close of the next preceding fiscal year had been in effect for at least one year—a part or all of the net interest earnings in excess of the assumed earnings during the preceding fiscal year on the Retirement Fund except earnings upon the accumulated contributions of active members; provided, however, that no such distribution shall be made of that part of said excess interest earnings as is required to maintain the contingency reserve against adverse mortality at an amount equal to two percent of the total assets of the Retirement System at the close of the next preceding fiscal year. (Amended by Ord. 74-67, App. 3/8/67; Ord. 64-02, File No. 012003, App. 5/10/2002)

SEC. 16.37-2. ACTUARIAL VALUATION.

The Retirement Board shall keep in convenient form such data as shall be necessary for the actuarial valuation of the Retirement System. As of June 30, 1933, and thereafter at intervals of not to exceed six years, the Board shall make an actuarial investigation into the mortality, service and compensation experience of the members and beneficiaries; and further shall make an actuarial valuation of the assets and liabilities of the Retirement System. From time to time, the Board shall determine the rate

of interest being earned on the retirement fund. Upon the basis of all or any such investigation, valuation and determination, the Board shall:

(a) Adopt for the retirement system such interest rate and such mortality, service and other tables, or any of such items, as shall be deemed necessary. (Added by Ord. 299-64, App. 11/9/64; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.37-3. RECORDS AS TO ACCUMULATED CONTRIBUTIONS.

In addition to the other records and accounts, shall keep such records and accounts as shall be necessary to show at any time:

(a) The total accumulated contributions of members.

(b) The total accumulated contributions of retired members less the annuity payments made to such members.

(c) The accumulated contributions of the City and County held for the benefit of members on account of service rendered as members of the Retirement System.

(d) All other accumulated contributions of the City and County, which shall include the amounts available to meet the obligation of the City and County on account of benefits that have been granted and on account of prior service of members. A portion of the accumulated contributions of the City and County—previously held for the benefit of members (excluding persons who are members under Section 8.540 and 8.565 of the Charter), on account of service rendered as members of the Retirement System, equal to the accumulated normal contributions withdrawn by a member, or paid to a beneficiary upon the death of a member or applied to purchase an annuity upon the retirement of a member, except the accumulated normal contributions for time on and after July 1, 1965, of members who exercise a valid election provided for in Section 16.70-1 of this Code—shall thereafter be included in the amounts available to meet the obligation of the City and County on account of benefits that have been granted and on account of prior service of members. No transfer of accu-

mulated contributions of the City and County shall be made on account of the withdrawal of accumulated contributions by a person who is a member under Sections 8.540 or 8.565 of the Charter; but upon the death or retirement of such a member, accumulated contributions of the City and County—previously held for the benefit of such member, actuarially equivalent to that portion of the benefit granted to him or to his beneficiary, which is chargeable to service rendered as a member of the Retirement System—shall thereafter be included in the amounts available to meet the obligation of the City and County on account of benefits that have been granted and on account of prior service of members. (Amended by Ord. 65-65, App. 3/19/67)

SEC. 16.37-4. DETERMINATION OF SERVICE CREDIT.

The Retirement Board shall determine the City and County service rendered by members and shall fix and may modify allowances for service and disability and fix other benefits. Except for the fiscal year in which retirement becomes effective, with respect to members under Section 8.509 of the Charter and regardless of the effective date of retirement, with respect to all other members, one year and proportionate parts thereof shall be credited on the basis of not more than 250 nor less than 220 days of City and County service rendered by per diem employees, on the basis of 10 months or more of City and County service rendered by monthly employees and on the basis of the receipt of $\frac{10}{12}$ ths of the annual salary received by teachers, but not more than one year shall be credited for all service in any fiscal year. For the fiscal year in which retirement becomes effective, and with respect only to members under Section 8.509 of the Charter, one year and proportionate parts thereof shall be credited on the basis of the average number, as determined by the Retirement Board, of days or hours ordinarily worked per year by persons in the same group or class of positions as the positions held by per diem or hourly employees during such fiscal year. Twelve months or more of City and County service rendered by monthly employees, and $\frac{12}{12}$ th of the annual

salary received by teachers, but not more than one year, shall be credited for all service in any fiscal year. Time during which a member was or shall be absent from City and County service without pay shall not be allowed in computing service, except as provided in Section 16.29-8 of this Code. (Added by Ord. 299-64, App. 11/9/64; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.37-4.1. DETERMINATION OF SERVICE CREDIT FOR CERTAIN EMPLOYEES OF THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

Notwithstanding the provisions of Section 16.37-4 of this Code, service credit under the retirement system shall be determined in accordance with the provisions of this Section for those persons employed by the San Francisco Unified School District in positions whose normal work schedule consists of eight hours per day, five days per week and is limited to the school term.

Except for the fiscal year in which retirement becomes effective, one year and proportionate parts thereof shall be credited on the basis of not more than 12 months nor less than nine months of City and County service, but not more than one year shall be credited for all service in any fiscal year.

For the fiscal year in which retirement becomes effective, one year and proportionate parts thereof shall be credited on the basis of 12 months, but not more than one year shall be credited for all service in any fiscal year.

Time during which such a member was or shall be absent from City and County service without pay shall not be allowed in computing service, except as provided in Section 16.29-8 of this Code.

The provisions of this Section are hereby declared to be retroactive with respect to service rendered prior to the effective date of this Section in positions whose normal work schedule consists of eight hours per day, five days per week and is limited to the school term by persons

employed in such positions on or after July 1, 1972. (Amended by Ord. 349-72, App. 12/11/72)

SEC. 16.37-5. PRIOR SERVICE CREDIT.

Credit for prior service shall be granted to each member who has rendered prior service as defined in Section 16.29-15.5 of this Code, and who entered the Retirement System prior to March 31, 1954, and to each member who has rendered prior service as defined in Section 16.29-15.10 of this Code and who has not failed to redeposit accumulated contributions withdrawn by him subsequent to such service, and to each member who has rendered prior service defined in Sections 16.29-15.1, 16.29-15.2, 16.29-15.3 and 16.29-15.4 of this Code, and who entered the Retirement System on January 8 or 9, 1932, except as provided in Sections 16.47 and 16.74 of this Code for re-entrants; and, except further, that any such member who has failed to redeposit accumulated contributions withdrawn by him from the San Francisco City and County Employees' Retirement System shall receive credit for such prior service only if, upon being notified by the Retirement Board, he makes such redeposit in the same manner as provided in Section 16.47 of this Code for persons re-entering City and County service. However, prior service so credited shall be the basis for a retirement allowance or benefit as provided herein only if membership continues unbroken until retirement on a retirement allowance or until the granting of such other benefit; provided, that a termination of membership by the withdrawal of accumulated contributions followed by the redeposit of such contributions upon re-entrance into City and County service shall not constitute a break in membership. (Amended by Ord. 79-65, App. 4/7/65; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.37-6. CALCULATION OF SERVICE CREDIT.

The method, heretofore used under the San Francisco City and County Employees' Retirement System in calculating the amount of City and County service to be credited to members, in fixing disability and service retirement allow-

ances and other benefits, in determining effective dates of membership in the Retirement System and in calculating members' contributions to the Retirement System, based upon the assumption that teachers, subsequent to first entering into their duties, are in City and County service throughout that part of the interims between school terms, during which they have been or shall be paid salary installments, is hereby approved solely for the purposes hereof and regardless of the status of such teachers under the state law. No adjustments affecting teachers under the Retirement System shall be made on the basis of payment of teachers' salaries in other than 12 monthly installments; provided, however, that this paragraph shall not prevent adjustments prior to termination of membership in the Retirement System, in contributions because of underpayments or overpayments of salary, nor shall it prevent the Retirement Board from modifying the method referred to in the first sentence of this paragraph, in the event that teachers' salaries shall be paid in other than 12 monthly installments, but such modification shall apply only to City and County service rendered thereafter. (Amended by Ord. 299-64, App. 11/9/64)

SEC. 16.37-7. CALCULATION OF SERVICE CREDIT BASED ON PART-TIME SERVICES.

In determining the credit to be granted for services rendered on a part-time basis, for the purposes of calculating retirement allowances, the service shall be reduced to a full-time basis according to the service required in the next preceding paragraph for credit for one year of service, in calculating benefits based on service so determined, compensation earnable shall be taken as the compensation which would be earnable if the employment had been on a full-time basis; and with a compensation derived by multiplying the member's compensation by the ratio of full time to the time he was required by his employment to engage in his duties. In calculating the credit to be granted for service rendered on a part-time basis, for purposes of determining qualifications for retirement, the service re-

quired in the next preceding paragraph for credit for a year of service shall not be used, but instead, a year of service shall be credited for each year during which the member was employed throughout the year on a part-time basis and was engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years shall be granted to the extent of the fraction derived by dividing the time during which the member was engaged in his duties within the years, by the time he was required by his employment to be so engaged. (Amended by Ord. 299-64, App. 11/9/64)

SEC. 16.37-8. EXCESS RETIREMENT BENEFITS.

(a) Whenever any person has been paid retirement benefits in excess of that which he was entitled to receive, by reason of excess earnings in gainful occupation after retirement, such person, upon demand of the Retirement Board, shall pay back into the Retirement Fund such excess.

(b) The full amount of such retirement benefits paid in excess of that which such person was entitled to receive shall be repaid to the Retirement Fund in one sum immediately upon demand, provided that the Retirement Board may permit the repayment to be made in installments where it finds that repayment in one sum immediately would cause undue hardship on such person.

(c) Funds received as repayment of such excess shall be returned to the account from which the excess was paid.

(d) The Retirement Board may authorize and direct the withholding of any and all benefit payments to such person until the full amount of such excess has been repaid. Where benefit payments are not withheld, while installment repayments are permitted by the Retirement Board, should the person fail or neglect to promptly pay any installment when due the Retirement Board at its discretion may forthwith authorize or direct the withholding of any and all further ben-

efit payments to such person until repayment is made of the full amount of the excess or the full amount of the unpaid installments.

(e) The City Attorney is hereby authorized and directed to take such action against such person, upon request of the Retirement Board, as may be necessary to effect full recovery of any such excess. (Added by Ord. 96-63, App. 5/2/63)

SEC. 16.37-9. POWER TO ISSUE SUBPOENAS.

The Retirement Board shall have the power and authority to compel the attendance of witnesses and the production of books, papers, testimony and other evidence before it by subpoena in connection with any inquiry, matter, proceeding or hearing by or before the Board.

The subpoenas herein provided for shall be issued in the name of the Retirement Board by the Secretary of the Retirement Board, or, in his absence, by the acting Secretary.

Any person refusing to obey such subpoena or to produce such books, papers, testimony or other evidence shall be deemed in contempt and subject to proceedings and penalties as provided by general law in such instances. (Added by Ord. 292-62, App. 11/20/62)

SEC. 16.38. ESTIMATES BY BOARD OF LENGTH OF SERVICE, ETC.

If it shall be impracticable for the Retirement Board to determine from the records the length of service, the compensation or the age of any members, the Board may estimate, for the purposes hereof, such length of service, compensation or age. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec. 13)

SEC. 16.41. CONTROLLER'S ANNUAL AUDIT.

The Controller of the City and County shall annually make an audit of the Retirement System. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec. 18)

SEC. 16.42. PERSONS INCLUDED IN THE SYSTEM.

(a) With the exception of members of boards and commissions, inmates of City and County institutions who are allowed compensation for

such service as they are able to perform and independent contractors, all eligible employees shall become members of the retirement system.

(b) "Eligible employees" shall mean:

(1) All employees certified from a civil service list for permanent employment;

(2) All employees appointed to a full-time permanent, civil service exempt position;

(3) All City employees who have earned not less than 1,040 hours of compensation during any 12-month period;

(4) All employees appointed to civil service classifications 2210 Dentist, 2220 Physician, 2222 Senior Physician, 2230 Physician Specialist, 2232 Senior Physician Specialist, 2233 Supervising Physician Specialist, 2236 Medical Advisor, 2292 Shelter Veterinarian, 2582 Forensic Pathologist or their successor classes.

(c) The effective date of membership shall mean:

(1) All employees certified from a civil service list for permanent employment shall be members on the appointment date;

(2) All employees appointed to a full-time permanent, civil service exempt position shall be members on the appointment date;

(3) All employees who first achieve eligibility concurrent with the enactment of (b)(3) above, shall have an effective date of membership on the first day of the first pay period following September 5, 1995;

(4) All employees who achieve membership under Subsection (b)(3) after September 5, 1995 by earning not less than 1,040 hours of compensation during any 12-month period shall have an effective date of membership on the first day of the first pay period following the date that he or she earns 1,040 hours of compensation;

(5) All employees who achieve membership under Subsection (b)(4) shall have an effective date of membership of July 1, 1995 or on their appointment date if they are appointed to civil service classifications 2210 Dentist, 2220 Physician, 2222 Senior Physician, 2230 Physician Specialist, 2232 Senior Physician Specialist, 2233 Supervising Physician Specialist, 2236 Medical

Advisor, 2292 Shelter Veterinarian, 2582 Forensic Pathologist or their successor classes after July 1, 1995. (Amended by Ord. 466-76, App. 12/3/76; Ord. 266-95, App. 8/18/95; Ord. 395-95, App. 12/22/95)

SEC. 16.43-1. PRIOR SERVICE CREDIT; EMPLOYEES ON HETCH HETCHY PROJECT.

Any employee on the Hetch Hetchy Project, who by ordinance has been excluded from membership in any Retirement System established by the City and County and who has or shall become a member of such a Retirement System by virtue of certification from a civil service list for permanent employment shall receive credit for service rendered as an employee of the Hetch Hetchy Project prior to the date he enters the Retirement System, in the same manner as credit for prior service is granted to other members and regardless of any lapse of time between termination of his service on the Hetch Hetchy project and certification for permanent employment; provided that such prior service credit shall be available to any such employee who is rendering City and County service on May 31, 1965, even though he thereafter be retired prior to the effective date of this ordinance. (Added by Ord. 272-65, App. 11/5/65)

SEC. 16.44. DEPARTMENT HEAD TO NOTIFY OF CHANGE OF STATUS OF MEMBERS.

It shall be the duty of the head of each office or department to give immediate notice in writing to the Retirement Board of the change in status of any member in his office or department resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, death or other cause. The head of each office or department shall furnish such other information concerning any member as the Board may require. (Bill No. 1125; Ord. No. 4.073(C.S.), Sec. 24)

SEC. 16.45. DUTIES GENERALLY OF MEMBERS AND BENEFICIARIES.

Each member and beneficiary shall be subject to all the provisions of this Article and to all

rules and regulations adopted by the Retirement Board and shall furnish to the Board such information affecting his status as a member or beneficiary of the system as the Board may require. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec. 25)

SEC. 16.46. WHEN MEMBERSHIP CEASES.

Should the City and County service of any member, in any period of 10 consecutive years, amount to less than five years, or should he die or be retired, or should he be paid more than one-quarter of his accumulated normal contribution, or should he resign or be discharged, he shall thereupon cease to be a member. (Bill No. 1125, Ord. No. 4.073 (C.S.), Sec. 26; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.47. WITHDRAWALS AND REDEPOSITS.

Should the City and County service of a member be discontinued, except by death or retirement, he shall be paid not less than six months after the date of discontinuance such part of his accumulated contributions as he shall demand; provided, that if in the opinion of the Retirement Board the member is permanently separated from City and County service by reason of such discontinuance, he shall be paid forthwith all of his accumulated contributions; provided, further, that the Retirement Board may in its discretion withhold for not more than one year after a member last rendered City and County service all or part of his accumulated normal contributions, if after a previous discontinuance of City and County service he withdrew all or part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the Retirement Fund as provided in this Section.

Any member who re-enters the Retirement System at an age less than the age for compulsory retirement applicable to him; but not otherwise, and after termination of membership because of previous withdrawal of his accumulated contributions, may elect, at any time prior to his retirement, to redeposit in the Retirement Fund,

in a lump-sum or in not to exceed 36 monthly or 72 semi-monthly payments: (1) an amount equal to the accumulated contributions that he has withdrawn at one or more terminations of service, but in reverse chronological order in which they occurred; (2) an amount equal to additional interest which would have been credited to his account at the date of the election, had such contributions not been withdrawn; and (3) interest on the unpaid balance of the amount payable to the Retirement Fund, beginning on the date of such election, at the rate of interest currently being used from time to time under the system. In no event, however, shall a monthly payment on the redeposit be less than \$20 and in no event shall the period for the making of installment payments extend beyond the effective date of retirement. Said election shall be made by written document filed in the office of the Retirement System prior to the effective date of retirement.

If a member shall not so elect, or having so elected subsequently does not make such redeposit, he shall re-enter as a new member without credit for any service, and his rate of contribution for future years shall be the normal rate provided by the Charter or this Code.

If a member elects to redeposit his accumulated normal contributions in accordance with this Section, his normal rate of contribution beginning on the first day of the calendar month following the date his election is filed in the office of the Retirement System shall be based on an age determined by adding the number of completed years of his absence from membership beginning with the earliest termination of his membership included in such redeposit, to the age upon which his normal rate of contribution, as it was prior to the termination, was based. His membership is the same as if it were unbroken by such termination.

If such member never failed to redeposit accumulated contributions withdrawn from the Retirement Fund; or, if he shall redeposit such accumulated contributions upon first re-entering hereafter, and not otherwise, then he shall receive credit for prior service in the same manner as persons who become members on January 8,

1932; provided, that members under Section 8.565 of the Charter shall receive credit for such prior service even though having withdrawn no accumulated contributions they shall make no redeposit; in the event such redeposit is made by a person who is a member under Section 8.507 of the Charter, an amount equal to the accumulated normal contributions so redeposited, except accumulated normal contributions for time on and after July 1, 1965, of members who exercise a valid election provided for in Section 16.70 of this Code, shall again be held for the benefit of the member and shall no longer be included in the amounts available to meet the obligations of the City and County on account of benefits that have been granted and on account of prior service of members. (Amended by Ord. 363-69, App. 12/23/69; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.48. PAYMENTS AFTER RE-ENTRY INTO SYSTEM.

Notwithstanding provisions in this Code to the contrary, any member of the San Francisco City and County Employees' Retirement System under Sections 8.507 or 8.509 of the Charter, who prior to January 1, 1953, elected upon one or more re-entries into the system after withdrawing his accumulated contributions from the Retirement Fund, not to redeposit such accumulated contributions, and who therefore re-entered the system as a new member without credit for any service and with a rate of contribution based on his age at such re-entry, may redeposit all of the withdrawn accumulated contributions not previously redeposited, in monthly payments, plus interest, at the respective interest rates used under the Retirement System from time to time since such re-entry, from the respective dates of re-entry to the date of payment; provided, that in no event shall any monthly payment on the redeposit, except the payment of the balance due, be less than three percent of the amount to be redeposited or 20 percent of the compensation earned during the month, whichever is the lesser. Any such member shall elect on or before the expiration of 180 days after the

effective date of this Section to make or not to make such redeposit. Failure to elect shall be deemed an election not to redeposit.

If a member elects under this Section to make the redeposit and does not pay in full the amount due, the portion of the redeposit paid shall be refunded to him, and his status under the Retirement System shall be the same as if he had never elected under this Section to make such redeposit. The accumulated contributions standing to the credit of such member on the effective date of this Section and his rate of contribution shall not be affected by this Section.

If a member redeposits under this Section, his membership shall be the same as if he had redeposited at the time he first had the right to do so. If such redeposit is made by a member under Section 8.507 of the Charter, an amount equal to the accumulated normal contributions so deposited shall again be held for the benefit of the member and shall no longer be included in the amounts available to meet the obligations of the City and County on account of benefits that have been granted and on account of prior service of members. The contributions required of the City and County currently, as percentages of salaries of persons who are members under Section 8.509 of the Charter, shall be increased to percentages determined by the actuary as necessary to increase the reserve held by the Retirement System on account of miscellaneous members by an amount equal to the increase in liabilities under the system resulting from redeposits under this Section, by members under Sections 8.07 and 8.509 of the Charter. (Ord. No. 8081(1939), Sec. 2)

SEC. 16.49. BENEFITS TO MEMBERS UNDER PRIOR SYSTEMS CONTINUED.

Any person who was receiving a retirement allowance or other benefit on January 8, 1932, under the San Francisco City and County Employees' Retirement System, the Police Relief and Pension Fund or the Firemen's Relief Fund, shall continue to receive such retirement allowance or other benefit, subject to the provisions of this Article, to the provisions of Section 8.543 of the Charter or to the provisions of Section 8.565

of the Charter, respectively, governing the payment of retirement allowances or other benefits. Such retirement allowances or other benefits, however, shall be paid by the Retirement System beginning with January, 1932. (Bill No. 1125, Ord. 4073(C.S.), Sec. 29)

SEC. 16.52. EFFECT OF CHANGE OF POLICE OR FIRE DEPARTMENT MEMBER TO ANOTHER DEPARTMENT.

If a person who is a member under Sections 8.559, 8.585, 8.586 or 8.588 of the Charter shall cease to be a member of the Police or Fire Department and shall be a member under any other section of the Charter; or, if the reverse be true; then the accumulated contributions standing to his credit or redeposited by him shall remain in his individual account. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec. 33; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.54. DEDUCTION OF MEMBERS' CONTRIBUTIONS; ACCEPTANCE OF CASH PAYMENTS.

The Retirement Board shall certify to the head of the proper office or department and the Controller the normal rate of contribution for each member provided for by Charter or this Code, and the amount of contributions provided for in Section 16.50 and Section 16.70-1 of this Code. The head of such office or department or the Controller shall apply such rate of contribution to all of his compensation to determine the amount to be contributed by each member, and shall furnish immediately to the Retirement Board a copy of each and every such payroll.

Each of such amounts shall be deducted by the Controller and shall be deposited by the Retirement Board in the Retirement Fund and shall be credited by the Retirement Board, together with regular interest, to the individual account of the member for whom the contribution was made. The Retirement Board, however, may accept cash payments by any member of amounts necessary to correct or adjust the contribution account of such member, the amount so

accepted to be deposited and credited in the same manner as if deducted on a payroll and the Controller to be notified of such payment.

Every member shall be deemed to consent and agree to the contribution made and provided for by this Article, and shall receipt in full for his salary or compensation, and payment less such contribution shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by such person during the period covered by such payment, except his claims to the benefits to which he may be entitled under the provisions of this Article. (Amended by Ord. 65-65, App. 3/19/65; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.55. ADDITIONAL CONTRIBUTIONS.

Any member, except persons who are members under Sections 8.540 and 8.565 of the Charter, may elect to contribute at rates in excess of those provided in this Article for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the City and County any additional financial obligation. The provisions of Section 16.54 of this Code shall apply also to additional contributions. The Retirement Board, upon application, shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contribution. (Bill No. 1125, Ord. No. 4073(C.S.), Sec. 36)

SEC. 16.55-1. DEFINITION OF "PUBLIC SERVICE."

As used in Sections 16.55-1 to 16.55-4, inclusive, "public service" means:

(a) Civilian service rendered as an employee or officer of an agency of the government of the United States;

(b) Civilian service rendered as an employee or officer of the State of California; and

(c) Service rendered as an employee or officer of a public agency in the State of California which, with respect to such service, maintains a locally administered retirement system or is

entitled to participate in the Public Employees' Retirement System of the State of California under a contract between such public agency and the Public Employees' Retirement System.

For the purposes of this Section, a person shall be considered as being in public service only while he is receiving compensation from the public agency of which he is an employee or officer.

"Public service," as used herein, does not include service as defined in Subdivisions (a), (b) or (c) of this Section with respect to which a person became a member of any other retirement system supported wholly or in part by public funds and with respect to which he continues to receive credit in such other system or with respect to which he is entitled to receive a retirement allowance under such other system. (Added by Ord. 171-70, App. 5/28/70)

SEC. 16.55-2. ELECTION TO CONTRIBUTE AND RECEIVE CREDIT FOR PUBLIC SERVICE.

Any member of the Retirement System under Section 8.509 of the Charter who was in public service prior to becoming a member of this retirement system shall have the right to elect to make contributions pursuant to Section 16.55-3 of this Code and to receive credit in this system as City and County service for all or any part of the time he was in such public service; provided, that a member so electing must elect to receive credit for no less than six months of such public service or all of his public service where the total period of his public service is less than six months.

Said election shall be made in writing on a form provided by the Retirement System. Said election may be made only during the period commencing August 1st and ending October 31st of each year; provided, however, that a member may make such election at any time during the 90 days immediately preceding the effective date of his retirement.

The amount of public service for which a member elects to contribute and the fact that he is not entitled to receive credit in another retire-

ment system by virtue of such service must be certified to by an officer of the public agency to which he rendered such public service or of the retirement system of which he was a member with respect to such service, or must otherwise be established to the satisfaction of the Retirement Board. (Added by Ord. 171-70, App. 5/28/70)

SEC. 16.55-3. CONTRIBUTIONS FOR PUBLIC SERVICE CREDIT.

Any member of the Retirement System under Section 8.509 of the Charter, who elects, pursuant to Section 16.55-2 to make contributions and receive credit as City and County service for all or any part of the time he was in public service, shall contribute to the Retirement Fund an amount equal to the sum of:

(a) Contributions computed by applying the rate of contribution applicable to him on the date he elected to receive credit for such service to the monthly compensation earnable by him on said date multiplied by the number of months of public service for which he has elected to receive credit as City and County service;

(b) Contributions computed by applying the City and County's rate of contribution with respect to members under Section 8.509 on the date of such election to the monthly compensation earnable by such member on said date multiplied by the number of months of public service for which he has elected to receive credit as City and County service;

(c) With respect to public service rendered on and after July 1, 1969, contributions computed by applying to the monthly compensation earnable by such member on the date he elects to receive credit for such service the rates of contribution required by Section 8.526(B) of members under Section 8.509 of the Charter if he had been a member of this system at the time he rendered such public service multiplied by the number of months of public service rendered on and after July 1, 1969, for which he has elected to receive credit as City and County service;

(d) With respect to public service rendered on and after July 1, 1969, contributions computed by applying to the monthly compensation earnable by such member on the date he elects to receive credit for such service the rates of contribution required of the City and County by Section 8.526(B) of the Charter if he had been a member of this system at the time he rendered such public service multiplied by the number of months of public service rendered on and after July 1, 1969, for which he has elected to receive credit as City and County service; and

(e) In the case of members who make payment by other than lump-sum payment, interest on the unpaid balance of the amount payable into the Retirement Fund under this Section, commencing on the date of the member's election to make such contributions, at the rate of interest currently being used from time to time under the Retirement System.

Payment of the contributions required by this Section shall be made in a lump-sum or by installment payments over a period equal to the length of time for which the member has elected to receive credit for such public service. Installment payments shall be made at times and in a manner fixed by the Retirement Board; provided, that the period for completion of such payments shall not exceed five years nor extend beyond the effective date of the member's retirement.

Any member who elects to make such contributions by installment payments may, at any time during the period for making such installment payments, complete payment of such contributions by lump-sum payment.

Any member who elects to make such contributions by installment payments may, at any time prior to completion of payment of such contributions, revoke his election to make such contributions and to receive such credit in this system as City and County service for time during which he was in public service. Such revocation shall be in writing and shall be effective only if filed with the Retirement System. Upon such revocation of election, the Retirement System shall refund to the member all of the

contributions which he has made pursuant to such election and said member shall thereafter not have the right to elect to receive credit for the public service which was the subject of said revoked election.

All contributions made pursuant to this Section, except those made pursuant to Subdivisions (c) and (d) of this Section, and the interest thereon shall be considered to be and shall be administered as contributions of the member made pursuant to Section 8.526 of the Charter. (Added by Ord. 171-70, App. 5/28/70)

SEC. 16.55-4. CREDIT IN RETIREMENT SYSTEM FOR PUBLIC SERVICE.

Upon completion of payment of contributions in the amount specified in Section 16.55-3, the member shall be credited with City and County service in the amount of public service for which he has elected to receive credit as City and County service pursuant to Section 16.55-2. The City and County service with which the member is so credited shall be credited as current service. (Added by Ord. 171-70, App. 5/28/70)

SEC. 16.55-5. RULES AND REGULATIONS.

The Retirement Board shall adopt such rules and regulations as may be necessary and appropriate to carry out the provisions of Section 16.55-1 through 16.55-4, inclusive, of this Code. (Added by Ord. 171-70, App. 5/28/70)

SEC. 16.55-6. RECIPROCAL BENEFITS.

This Section shall extend the following rights in the Retirement System to members of any other public agency retirement system (hereinafter "reciprocal system") which adopts similar reciprocal provisions in their retirement ordinances or plans pursuant to Sections 20042, 20043, 31840.2 and 45310.5 of the Government Code, and who by contract agree to extend the *benefits thereof to the Retirement System*; provided that such member enters employment and becomes a member under the Retirement System of the reciprocal system within six months of

terminating his or her employment under such other reciprocal system or the Retirement System.

(a) Notwithstanding any provisions of the Retirement System or a reciprocal system plan in the matter of vesting, any member subject to Charter Sections 8.509, 8.559, 8.584, 8.585, 8.586 and 8.588 whose movement between systems occurs as herein specified shall have the right to elect to leave his or her accumulated contributions on deposit irrespective of the amount of such contributions or length of service. Interest on said accumulated contributions shall accrue at plan rates. If a member does not vest or qualify for a reciprocal benefit the member shall receive a refund of contributions plus interest.

(b) The average monthly salary during any period of service as a member of a reciprocal system shall be considered compensation earned or earnable by a member of the Retirement System for purposes of computing final average compensation for such member according to the applicable Charter provisions, provided the member retires concurrently under both systems and is credited with such period of service under one reciprocal system at the time of retirement.

(c) For the sole purpose of meeting minimum service qualifications for benefits and retirement allowances under the Retirement System, service shall also include service rendered as an officer or employee of a reciprocal system if the salary for such service constitutes compensation earned or earnable by a member of this system. For police and fire members of the Retirement System subject to Charter Sections 8.559, 8.585, 8.586 and 8.588, if Retirement System service is less than 25 years at the time of retirement, the member shall receive a pro rata portion of the benefit for 25 years of service.

Police and fire members of the Retirement System subject to Charter Sections 8.559, 8.585, 8.586 and 8.588, with 25 or more years of service credit with the Retirement System, shall receive benefits based on Retirement System service only as defined by Charter Sections 8.559, 8.585, 8.586 and 8.588.

(d) Any retirement or death allowance payable to or on account of a police or fire member of the Retirement System subject to Charter Sec-

tions 8.559 and 8.585 shall be adjusted in accordance with the provisions of Charter Sections 8.559-6 and 8.585-6, provided that any increase or decrease shall be related to the rank or position that said member held for at least one year immediately prior to terminating City service and provided further that if the member's accrued service credit is less than 25 years, the Charter Section 8.559-6 and 8.585-6 adjustments will be multiplied by a fraction where the denominator is 25 and the numerator is equal to the member's accrued service credit at the date of termination of City service.

(e) A member shall be retired for disability and receive a retirement allowance based on the service credited to him or her at the time of retirement during any period in which he or she receives a disability retirement allowance under a reciprocal system; provided, that such allowance shall not exceed an amount which when added to the allowance paid under the reciprocal system equals the allowance which would be paid for a non-service connected disability if all the member's service had been credited under the reciprocal system; and provided further, that such allowance shall in no event be less than an annuity which is the actuarial equivalent of the member's contributions, whether or not the disability is for service connected reasons. The minimum allowance provisions of the City Charter will not be applied if the member has less than 10 years of credited service under the Retirement System. In such a case, the disability allowance paid by the Retirement System shall be based on San Francisco service only.

(f) The death benefit for a member who dies from non-industrial causes as a member of a reciprocal system shall not exceed an amount which when added to the death benefit paid for such member under the reciprocal system equals the death benefit payable under that system had all reciprocal service been rendered under that system; provided, however, that such death benefit shall be at least the amount of the member's accumulated contributions in the Retirement System. If death is caused by industrial injury or disease in the reciprocal system, the death benefit shall be the amount of the member's accu-

mulated contributions in the Retirement System. For a member of the Retirement System who dies from non-industrial causes, the minimum allowance provisions will not be applied if the member needs service rendered in a reciprocal system to meet minimum service qualification for a survivor allowance. In such a case, the allowance paid by the Retirement System shall be based on San Francisco service only.

(g) The Retirement Board shall on the request of a reciprocal system supply information and data necessary for administration of such system as it is affected by membership in and service credited under the Retirement System.

(h) Interpretation of this Section shall be made consistent with the City Charter and with reference to interpretations that have been made relative to the reciprocal benefit provisions of the Public Employees' Retirement System and 1937 County Employees' Retirement Act upon which this Section is based and which this Section is intended to implement. This Section shall not apply to members who transfer solely within the Retirement System between miscellaneous, police and fire plans.

(i) These provisions shall apply only to a member whose termination and entry into employment resulting in a change in membership from the Retirement System to such other reciprocal system or from such other reciprocal system to the Retirement System occurred after such acceptance by the Board of Supervisors or after the effective date specified in the agreement; provided, however, that provisions relating to computation of final compensation shall apply to any other member if such provision would have applied had the termination and entry into employment occurred after such acceptance or determination by a system's governing board.

(j) Reciprocal rights under this Section shall be modified as necessary to conform to amendments to the Public Employees' Retirement Law or the County Employees' Retirement Law of 1937 as provided in Government Code Section 20042. (Added by Ord. 275-88, App. 6/29/88; amended by Ord. 371-90, App. 11/13/90)

SEC. 16.55-7. INTERNAL RECIPROCITY OF PENSION BENEFITS WITHIN THE RETIREMENT SYSTEM.**(a) When Internal Reciprocity Applies.**

Subject to the provisions of Charter Section 8.500-1, including but not limited to the effective dates therein, when a person ceases to be a member of the Retirement System under Charter Section 8.509, 8.559, 8.584, 8.585, 8.586 or 8.588, or is granted a leave of absence to work in another city position, and then within six months, again becomes a member of the Retirement System under a different set of Charter provisions, this section shall allow such member to receive reciprocal benefits within the Retirement System if the member retires concurrently under all benefit provisions.

(b) Summary of Internal Reciprocity.

Reciprocal benefits within the Retirement System shall mean that: (1) all service credit earned within the Retirement System shall be used for qualification purposes, (2) final compensation shall include compensation earned while a member under any set of Charter provisions and (3) pension benefit calculations shall be prorated based on service credit earned and determined according to the provisions and percentages specified under each set of Charter sections.

(c) Procedures. Notwithstanding any provisions of the Retirement System concerning vesting, on and after April 1, 1993, any member whose movement between different sets of Charter provisions occurs as specified in Paragraph (a), shall have the right to elect on the form specified by the Retirement System to leave his or her accumulated contributions on deposit irrespective of the amount of such contributions or the length of service. Interest on said accumulated contributions shall continue to accrue at plan rates. If the member does not qualify for reciprocal benefits or vest, the member shall receive a refund of contributions plus interest.

Members of the retirement system on and after April 1, 1993, who received refunds of pension contributions prior to April 1, 1993 for periods of membership that would otherwise qualify for reciprocity benefits within the Retirement System, may redeposit those contributions

plus interest at plan rates at any time before death or retirement, whichever occurs first, and qualify for reciprocity within the Retirement System.

Members of the Retirement System on and after April 1, 1993, who had periods of City employment prior to becoming members of the Retirement System that would otherwise qualify for reciprocity benefits within the Retirement System, may receive service credit by paying member contributions plus interest at plan rates based on the compensation received during those periods of employment at any time before death or retirement, whichever occurs first, and qualify for reciprocity within the Retirement System.

(d) Final Compensation. Average final compensation shall be based on all compensation earned or earnable by a member during any period of membership under the Retirement System, provided that the member is credited with such period of service at the time of retirement and provided further that pension benefit calculations shall be prorated based on service credit earned and determined according to the provisions, including, but not limited to the final compensation provisions, and percentages specified under each set of Charter provisions.

(e) Qualification Purposes. For the sole purpose of meeting minimum service qualifications for benefits and retirement allowances under the Retirement System, service shall include any service credit earned under the Charter provisions of the Retirement System as described in Paragraph (a) above.

For police and fire members of the Retirement System, if service credit as defined by Charter Sections 8.559-10, 8.585-10, 8.586-10 and 8.588-10 is less than 25 years at the time of retirement, the member shall receive a pro rata portion of the benefit for 25 years of service. Police and fire members of the Retirement System with 25 or more years of service credit with the Retirement System, shall receive police and fire benefits based only on the portion of Retirement System service credit defined by Charter Sections 8.559-10, 8.585-10, 8.586-10 and 8.588-

10; they shall receive miscellaneous retirement benefits based only on the portion of Retirement System service credit earned under Charter Sections 8.509 and 8.584.

(f) **Cost-of-Living Adjustments.** Cost-of-living adjustments for any retirement or death allowance shall be prorated based on the member's accrued service credit under Charter Sections 8.509, 8.559, 8.584, 8.585, 8.586 or 8.588.

Any retirement or death allowance payable to or on account of a police or fire member of the Retirement System subject to Charter Sections 8.559 and 8.585 shall be adjusted in accordance with the provisions of Charter Section 8.559-6 and 8.585-6, provided that any increase or decrease shall be related to the rank or position that said member held for at least one year immediately prior to terminating police or fire service and provided further that if the member's accrued service credit under Charter Section 8.559-10 or 8.585-10 is less than 25 years, the Charter Section 8.559-6 and 8.585-6 adjustments will be multiplied by a fraction where the denominator is 25 and the numerator is equal to the member's accrued service credit under Charter Section 8.559-10 or 8.585-10.

(g) **Disability Benefits.** When a member is retired for disability, he or she shall receive a disability retirement allowance based on all service credit earned in the retirement system provided that the disability allowance allowed under any earlier set of Charter provisions shall not exceed an amount which when added to the allowance provided under the current set of Charter provisions equals the allowance which would be paid for a nonservice connected disability if all the member's service had been credited under the set of Charter provisions in which the member was last active prior to the effective date of his or her disability retirement. If a member is retired for a service connected disability under Charter Sections 8.559, 8.585, 8.586 or 8.588, then he or she will be entitled to an additional refund or vesting benefit under the provisions of Charter Sections 8.509 or 8.584.

(h) **Death Benefits.** If an active member, under Charter Sections 8.559, 8.585, 8.586 or 8.588, dies by reason of an industrial injury or

illness, then the death benefit may include the refund of the member's accumulated contributions in the Retirement System relating to service credit under Charter Sections 8.509 and 8.584. In all other death cases, the death benefit shall not exceed an amount which equals the death benefit payable had all reciprocal service been rendered under the plan in which the member was active immediately before the time he or she died.

(i) **Interpretation Consistent With PERS.** Interpretation of this section shall be made consistent with the Charter Section 8.500-1 and with reference to interpretations that have been made relative to the reciprocal benefit provisions of the Public Employees' Retirement System and The 1937 County Employees' Retirement Act. This section shall apply to members who transfer solely within the Retirement System as described in Paragraph (a) above.

(j) **Concurrent Accrual of Benefits Prohibited.** With the exception of adult hourly credits, members shall not accrue pension benefits concurrently under Charter Section 8.509, 8.559, 8.584, 8.585, 8.586 or 8.588. For internal reciprocity purposes, a person shall be deemed to be an active member under only the set of Charter provisions as determined by his or her pension contributions at the time of any particular pension event. (Added by Ord. 231-93, App. 7/22/93)

SEC. 16.56. WITHDRAWAL OF ACCUMULATED ADDITIONAL CONTRIBUTIONS MADE PURSUANT TO SECTION 16.55-5.

Any person who is a member of the San Francisco City and County Employees' Retirement System and has made additional contributions pursuant to Administrative Code Section 16.55 shall have the right to elect, in writing on a form furnished by the system and to be filed at the office of said system, to withdraw forthwith all or any part of his accumulated additional contributions and to receive repayment in a lump sum; provided, however, that the right of withdrawal of said funds shall be limited to not more than three in number during said employee's

tenure of employment in the City and County service and membership in the Retirement System. (Amended by Ord. 226-66, App. 9/1/66)

SEC. 16.61-1. IMPLEMENTATION OF INTERNAL REVENUE CODE SECTION 414(h)(2).

(a) The purpose of this section is to implement the provisions contained in Section 414(h)(2) of the Internal Revenue Code of the United States concerning the tax treatment of employee contributions paid by the City and County on behalf of affected employees and to adopt the limitations set forth in Sections 401(a) and 415 of the Internal Revenue Code.

Pursuant to Section 414(h)(2) contributions to a pension plan, although designated under the plan as employee contributions, when paid by the employer in lieu of contributions by the employee, under circumstances in which the employee does not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer, may be excluded from the gross income of the employee until these amounts are distributed or made available to the employee.

(b) Notwithstanding any other provisions to the contrary, the City and County may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code [26 U.S.C.A. 414(h)(2)] and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions required to be paid by a member of the Retirement System. Nothing herein shall be construed to mean that any contributions so picked up by the City are to be treated as City contributions for any purpose other than the sole and limited purpose specified herein. No pickup shall be made pursuant to this section except upon a determination by the Controller as required by subsection (e) below.

The provisions of this Section shall be administered on a bargaining unit basis and shall be subject to any applicable meet and confer laws.

Any appropriate representation unit recognized by the City and County, by and through the

employee organization certified to represent it, may opt out of the provisions of this Section by meeting and conferring with the City and County's Employee Relations Division for a memorandum of understanding to so provide. In the event such agreement is reached, contributions of the employees involved shall be treated for all purposes in the same manner and to the same extent as members' contributions made prior to the operative date of this Section.

A memorandum of understanding arrived at under this subsection shall continue in effect from year to year, subject to termination by notice by the employee organization which had negotiated the memorandum of understanding, served not less than ninety days prior to the proposed date of termination.

(c) No member shall have the option of choosing to receive directly the contributions picked up by the City and County instead of having such amounts paid to the Retirement System.

(d) The contributions picked up by the City and County shall be treated for all purposes, other than taxation, in the same manner and to the same extent as members' contributions made prior to the operative date of this section.

(e) This section shall be operative only so long as the City and County's pickup of employee contributions continues to be excludable from the gross income of members under the provisions of Internal Revenue Code Section 414(h)(2).

The City and County shall retain the authority periodically to increase, reduce or eliminate, subject to meet and confer where legally appropriate, the pickup by the City and County of all or a portion of the contributions required to be paid by a member of the Retirement System, as authorized by Section 414(h)(2), Internal Revenue Code.

(f) The employer pickup shall work as follows:

1. **General Rule—Full Pickup.** All employee contributions required under the Retirement System for amounts earned on and after an effective date to be specified by the Controller ("the Effective Date") shall be paid by the respec-

tive member's employer in lieu of contributions by the member. The member shall have no right to alter the amount of such contribution, nor shall the member have the right to receive directly the contributed amounts instead of having the employer pay them to the Retirement System.

2. Exception—Reduced Pickup.

a. **Employer Contribution.** A member may elect as specified below to have his or her employer contribute in lieu of the employee's contribution, the amount of the reduced rate of contributions specified in Charter Section 8.514(a), effective for amounts earned on and after the Effective Date. The member shall have no right to alter the amount of such employer contribution on his or her behalf, nor shall the member have the right to receive directly the contributed amounts instead of having the employer pay them to the Retirement System.

b. **Right of Further Employee Contribution.** The member shall continue to have the right to make further contributions as specified in Charter Section 8.514(a) so that the total contributed on his or her behalf by (i) the member's employer and (ii) the member equals the total employee contribution otherwise required under the Retirement System.

c. **Timely Election of Reduced Pickup.** In order to qualify for the reduced pickup, the member must complete the Retirement System's form electing the reduced pickup and then timely file such form with the Retirement System.

(i) The Controller shall specify an election period which shall begin on an Election Date and end on a Cutoff Date. The Cutoff Date shall be prior to the Effective Date. For members who are earning compensation subject to Retirement System contributions on the Election Date, the election form must be filed with the Retirement System no later than the Cutoff Date. The election shall become effective for earnings on and after the Effective Date.

(ii) For members who are not earning compensation subject to Retirement System contributions on the Election Date, but who do so at some time after that date, the election form must

be filed with the Retirement System on the first day after the Election Date that the member earns such compensation. The election shall become effective for earnings on and after the later of (i) the Effective Date or (ii) the date that the employee files the election with the Retirement System.

3. Irrevocability.

a. **Members Electing Full Pickup.** All members who did not timely file the election specifying the reduced pickup shall have the further contribution picked up and shall have no further opportunity to elect the reduced pickup.

b. **Members Electing Reduced Pickup.** All members who timely filed the election specifying the reduced pickup shall have only the reduced rate contribution picked up and shall have no further opportunity to elect the full pickup.

4. Exception: Employees Covered by Certain Memoranda of Understanding.

a. **Coverage Under a Memorandum of Understanding Specifying Pickup Treatment.** If a duly certified bargaining unit enters into a memorandum of understanding with the employer that specifies that employees covered by the memorandum of understanding who are members of the Retirement System will have (i) the full pickup, or (ii) no pickup, then all members so covered shall be treated as described in that memorandum of understanding for as long as they are covered by it.

b. **Cessation of Coverage Under a Memorandum of Understanding Specifying Pickup Treatment.** If a member ceases to be covered by a memorandum of understanding with the employer specifying how covered employees will be treated with respect to the pickup, then:

(i) If the member had not previously had the opportunity to elect the reduced pickup, the member shall be offered such election on the first day on which the member earns compensation subject to Retirement System contributions following cessation of coverage under the memorandum of understanding.

(ii) If the member previously had the opportunity to choose the reduced pickup, then the member's pickup shall again be treated as it was prior to coverage under the memorandum of understanding.

5. Employees Not Covered by Social Security. The Controller may specify different Effective Dates for employees covered by Social Security and for employees not covered by Social Security. Those not covered by Social Security will not be offered the reduced pickup election. (Added by Ord. 349-89, App. 10/10/89; amended by Ord. 37-90, App. 1/30/90)

SEC. 16.61-2. ADOPTION OF INTERNAL REVENUE CODE SECTION 415 LIMITATIONS.

(a) Notwithstanding any other provision of the Charter or Administrative Code to the contrary, the benefits payable by the Retirement System to any person who becomes a member of the Retirement System on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code.

(b) The benefits payable to any person who became a member of the Retirement System prior to January 1, 1990, shall be determined by the vested rights rule and shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:

(1) The limitations set forth in Section 415 of the Internal Revenue Code.

(2) The accrued benefit formula of a member under the Retirement System (determined without regard to any amendment to the benefit formula made after October 14, 1987).

(c) This subsection shall be operable only so long and to the extent necessary for the Retirement System to maintain qualified status under the Internal Revenue Code. (Added by Ord. 349-89, App. 10/10/89)

SEC. 16.61-3. ADOPTION OF INTERNAL REVENUE CODE SECTION 401 LIMITATIONS.

Notwithstanding any other provision of the Charter or Administrative Code, any benefits

payable on account of any member of the Retirement System shall be subject to the limitations set forth in Section 401(a) of the Internal Revenue Code.

The total benefits payable on account of any member of the Retirement System shall also be determined by the vested rights rule. Any reduction in benefits payable because of Section 401(a) limitations shall be made up by payments from a trust fund maintained and funded by the City and County. The administration and accounting for this fund shall be carried out by Retirement System staff. (Added by Ord. 349-89, App. 10/10/89)

SEC. 16.61-4. PRE-TAX TREATMENT OF BUY BACKS.

Notwithstanding any other provision of law, the City may pick-up, for the sole purposes of deferring income taxes thereon, as authorized by the Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and the Revenue and Taxation Code (Section 17501), as amended from time to time, any payroll deductions that may be required to be paid into the Retirement System for redeposits, shortages, and prior service, including but not limited to temporary service, public service, military service and representative service. The picked-up amounts, although designated as members' contributions, shall be paid by the member's employer directly to the Retirement System in lieu of contributions by the member. The contributions picked-up by the City shall be treated for all purposes, other than taxation, in the same manner and to the same extent as members' contributions made prior to the operative date of this Section. The Retirement Board shall have the power to establish rules setting forth the procedures necessary to collect contributions for redeposits, shortages and prior service on a pre-tax basis and to satisfy the requirements of Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and the Revenue and Taxation Code (Section 17501), as amended from time to time. The member must agree to and sign an irrevocable payroll authorization on a form furnished by the Retirement System. After making the irrevocable payroll election, the member shall not have

the option of choosing to receive the amounts directly instead of having them paid by the employer to the Retirement System. A member may not terminate the irrevocable payroll authorization before completion of the payments or termination of employment. The effective date for the commencement of this pick-up shall not be earlier than the later of 30 days following the Mayor's approval of this ordinance or the date this ordinance is put into effect. (Added by Ord. 147-99, File No. 990045, App. 6/2/99)

SEC. 16.61-5. ACCEPTANCE OF ROLLOVERS AND TRANSFERS.

The Retirement System shall accept rollovers from eligible retirement plans as defined in Internal Revenue Code Section 402(c)(8)(B) and transfers from Code Section 457 and 403(b) plans to the extent permitted by 401(a), as payment for redeposits, shortages and prior service buy-backs, including but not limited to temporary service, military service and representative service.

The Retirement Board may adopt such rules and forms as may be necessary to implement the provisions of this section and to ensure conformity with Federal and State laws. (Added by Ord. 180-01, File No. 011093, App. 8/17/2001; amended by Ord. 94-02, File No. 020755, App. 6/14/2002)

SEC. 16.62. ESTABLISHMENT OF A SUPPLEMENTAL TAX DEFERRED PLAN.

The Retirement Board shall establish and administer a Supplemental Tax Deferred Plan ("401(a) Plan" or "Plan"). (Added by Ord. 242-02, File No. 040685, App. 9/30/2004)

SEC. 16.62-1. PURPOSE.

The purpose of this Plan is to offer employees of the City and County of San Francisco, the San Francisco Unified School District, the San Francisco Community College District and the Superior Court of California, County of San Francisco, a Supplemental Tax Deferred Plan to provide for the deferred taxation of accumulated vacation, sick leave or other compensation defined in the Adoption Agreement which is earned by and

payable to such employees on account of and after their separation from employment. The City and County of San Francisco does not and cannot represent or guarantee that any particular federal or state income, payroll or other tax consequence will occur by reason of participation in this Plan nor whether there will be gains or losses on moneys paid into this Plan. (Added by Ord. 242-02, File No. 040685, App. 9/30/2004)

SEC. 16.62-2. ADMINISTRATION BY RETIREMENT BOARD.

The Retirement Board shall have the exclusive authority to adopt such rules and regulations, and to prescribe such forms, as it deems necessary to carry out the purposes of the Plan. The Retirement Board shall manage the Plan in compliance with federal and state tax laws so that Plan benefits do not conflict with or reduce benefits under the Retirement System. The Retirement Board may employ consultants to advise the Board concerning the administration and investment of such funds as may be established.

The Retirement Board may contract with a financially responsible independent contractor to administer and coordinate the Plan under the direction of the Retirement Board. The Retirement Board may, in its discretion, establish guidelines or regulations for the bonding of any such contractor or any other person who handles funds or other assets of the Plan. Any such contractor shall agree to be responsible to the City and County of San Francisco for any and all services performed by a subcontractor, assignee or designee of contractor. (Added by Ord. 242-02, File No. 040685, App. 9/30/2004)

SEC. 16.62-3. ADMINISTRATIVE COSTS.

The reasonable and necessary administrative costs of this Plan shall be borne by participants or by any contractor appointed hereunder. (Added by Ord. 242-02, File No. 040685, App. 9/30/2004)

SEC. 16.67. PAYMENTS INTO FUND MADE OBLIGATION OF CITY; APPROPRIATIONS TO COVER OBLIGATION.

The payments of the City and County into the San Francisco City and County Employees'

Retirement Fund, as provided in former Sections 16.61 to 16.66 of this Code, and in Section 16.70-1 of this Code, are hereby made obligations of the City and County. There shall be appropriated, in the budget for each fiscal year, such amounts as are necessary to make such payments, less the portions to be paid from the several funds set forth in such sections, and the amounts so appropriated shall be provided for in the tax levy. Provision shall be made for the payment from the several funds of such amounts as shall be necessary to meet the obligations of the City and County under the Retirement System on account of employees whose compensation is or has been paid from such funds.

Funds appropriated annually to the Retirement System, other than from specific fund appropriations, shall first be applied to meet the requirements for fixed charges for current and prior service for the period for which such funds are appropriated; and second shall be applied to meet the accumulated obligations of the City and County to the Retirement System. (Amended by Ord. 65-65, App. 3/19/65; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.70-1. OPTIONAL ALLOWANCES UPON RETIREMENT.

(a) Subject to the provisions of this Section, any person who is a member under Section 8.507 of the Charter may exercise an election on a form provided by the Retirement System and filed in the office of the system prior to July 1, 1965, to contribute to the Retirement Fund at the normal rate as provided in paragraph (c) of this Section and, further, to pay at times and in the manner fixed by the Retirement Board retroactive contributions sufficient to make his accumulated contributions standing to his credit in the accounts of the system on June 30, 1965 equal to what these contributions would have been if he had contributed at his normal rates (as they would have been had he been a member under Section 8.509 of the Charter for time on and after July 1, 1947 and said contributions had been credited with regular interest through June 30,

1965, together with interest on the unpaid balance of such amount from July 1, 1965 to the date of payment.

(b) Effective on July 1, 1965, any person who exercises the election provided in this Section, and upon strict compliance with the provisions of this Section, but not otherwise, shall be entitled on or after his attainment of the age of 62 years to a service retirement allowance which shall be in lieu of the total retirement allowance provided in former Section 16.70 of this Code and which, exclusive of benefits provided by additional contributions, shall be a service retirement allowance at the rate of 1 percent of the average monthly compensation earned by him during any five consecutive years of credited service in the Retirement System in which such average is the highest for each year of service credited to him in the Retirement System; or upon his retirement for disability as provided in Section 16.71 of this Code, such a member who, on the effective date of such retirement, has not attained the age of 62 years, shall receive a disability retirement allowance which shall be calculated in the manner prescribed in former Section 16.72 of this Code, plus a pension provided by contributions of the City and County and equal to the annuity provided by his accumulated retroactive contributions.

(c) In lieu of the normal rate provided in former Section 16.51 of this Code, the normal rate of contribution of each member exercising such election, as provided in this Section, for time on and after July 1, 1965, shall be based on his nearest age at the effective date of his membership in the Retirement System, and shall be the same as his normal rate of contribution would be if he were a member under Section 8.509 of the Charter.

(d) The City and County shall contribute to the Retirement System such amounts as may be necessary, when added to the contributions of such members, to provide the benefits payable to said members.

The service retirement allowance of each such member shall be apportioned between the allowance based on service rendered prior to

July 1, 1965, and service rendered on and after said date. The portion of such allowance which shall be based on service rendered prior to said date and which is in excess of the allowance provided by the accumulated contributions of the City and County and of said member for time prior to said date including his accumulated retroactive contributions and interest thereon, shall be provided by contributions of the City and County which shall not be less during any fiscal year than the amount of such part of such allowance paid during such year, which is in excess of such annuity.

The portion of such allowances which shall be based on service rendered on and after said date, and which is in excess of the annuities provided by the accumulated contributions of said members for time on and after said date, shall be provided by contributions of the City and County for time on and after said date and interest credited thereon, which shall be in lieu of the contributions required of the City and County in former Section 16.61 of this Code, and which shall be made in annual installments. The installment to be paid in any year shall be determined by the application of a percentage to the total salaries paid during said year to such members, said percentage to be the ratio on July 1, 1965, or at a later date of a periodical valuation and investigation into the experience under the system as provided by the Board of Supervisors, of the value of such portion of said allowances thereafter to be paid to said members and which is in excess of the annuities provided by the said accumulated contributions of said members for time after said date, less the amount of contributions of the City and County and interest thereon then held by the system to provide said benefits, to the value at said respective dates of salaries thereafter payable to said members. Said values shall be determined by the actuary, who shall take into account the interest which shall be earned on said contributions, the compensation experience of members, and the probabilities of separation from service by all causes of members before retirement, and death of members after retirement. Said percentage

shall be changed only on the basis of said periodical actuarial valuation and investigation into the experience under the system.

The benefits provided in this Section, however, shall not be applicable to any member who is not continuously in the status of a retired person for time beginning on a date not later than the first day of the month next following his attainment of the age of 70 years during the period ending June 30, 1966; the age of 69 years during the 12 months ending June 30, 1967; the age of 68 years during the 12 months ending June 30, 1968; the age of 67 years during the 12 months ending June 30, 1969; the age of 66 years during the 12 months ending June 30, 1970; and thereafter following the attainment of the age of 65 years; but, instead, such person shall be entitled to the benefits otherwise provided for members under Charter Section 8.507 by the provisions of this Code for persons who do not exercise the election provided in Paragraph (a) of this Section, in the same manner as though he had never made such election, and if he has contributed to the Retirement System pursuant to the provisions of this Section, the accumulated contributions standing to his credit in the system shall be adjusted by refund to him or payment by him to bring the account to the amount which would have been credited to it had the member never made such election and had not contributed in the manner prescribed by it.

For the purposes of this Section the phrase "status of a retired person" shall mean with respect to any person a status beginning on the effective date of a retirement allowance which the person is entitled to receive as a result of his valid application for such allowance, which was filed in the office of the system not later than the last day of the month in which such allowance becomes effective.

It is hereby declared to be the intent of this Section that the benefit provisions contained herein would not have been enacted without the conditions expressed herein requiring that to be eligible for such benefits, any member who positively exercises the election provided herein, must actually contribute as prescribed herein,

and file an application for retirement within the time and in the manner provided herein, so as to place himself in the status of a retired person continuously for the time stipulated herein, in conformity with the provisions hereof, and in the absence of strict compliance with such provisions, that such election shall be void and of no effect, and that the member shall not be subject to the provisions of this Section; except that the accumulated contributions standing to his credit in the Retirement System shall be adjusted to what they would have been if he had not contributed in accordance with such election. (Added by Ord. 65-65, App. 3/19/65; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.70-3. RETIREMENT AFTER 3/31/66 UNDER PARAGRAPH (b) OF SECTION 16.70-1.

The service retirement allowance of any member who retires for service effective on or after March 31, 1966, as a member entitled to a service retirement allowance calculated according to the provisions of Paragraph (b) of Section 16.70-1 of this Code shall be a service retirement allowance at the rate of 1 percent of the average monthly compensation earned by him during any three consecutive years of credited service in the Retirement System in which such average is the highest for each year of service credited to him in the Retirement System, and such allowance shall be in lieu of the service retirement allowance to which he would be entitled under the provisions of said Paragraph (b) of Section 16.70-1.

This Section is not applicable to any person whose retirement allowance was first effective prior to March 31, 1966. This Section does not give any member or the beneficiary of any member, or his successors in interest, any claim against the City and County for an increase in any retirement allowance payable to or on account of any member whose retirement allowance was first effective prior to March 31, 1966. (Added by Ord. 74-66, App. 4/8/66)

SEC. 16.70-4. ALLOWANCE PAYABLE FOR TIME COMMENCING 7/1/74.

For time commencing on July 1, 1974, the service retirement allowance of any member who

retires for service on or after January 1, 1972, as a member entitled to a service retirement allowance calculated according to the provisions of Paragraph (b) of Section 16.70-1 of this Code, shall be a service retirement allowance at the rate of two percent of the average monthly compensation earned by him during any consecutive 12 months of credited service in the Retirement System in which such average is the highest for each year of service credited in the Retirement System. Such allowance shall be in lieu of the service retirement allowance to which such person would be entitled under the provisions of said Paragraph (b) of Section 16.70-1. In no event shall a member's retirement allowance, as increased under the provisions of this Section, exceed 75 percent of his average final compensation.

This Section is not applicable to any persons whose retirement allowance was first effective prior to January 1, 1972. This Section does not give any member or the beneficiary of any member, or his successors in interest, any claim against the City and County for any increase in any retirement allowance payable to or on account of any member for time prior to July 1, 1974. (Added by Ord. 50-75, App. 2/20/75)

SEC. 16.71. DISABILITY RETIREMENT—MEDICAL GROUNDS.

(a) Retirement of a member for disability shall be made by the Retirement Board upon medical examination as follows:

Any member while in City and County service, or within four months after the discontinuance of City and County service, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of City and County service, shall be examined by one or more physicians or surgeons selected by the Retirement Board, upon the Board's own motion, upon the application of the head of the office or department in which such member is employed, or upon the application of such member or of a person acting in his behalf, stating that such

member is physically or mentally incapacitated for the performance of duty and ought to be retired; provided:

(1) If he is a member under Sections 8.540 or 8.565 of the Charter, such disability is claimed to result from bodily injury received in the performance of duty;

(2) If he is a member under Section 8.543 or 8.567 of the Charter, he has rendered 10 or more years of continuous service or such disability is claimed to result from bodily injury received in the performance of duty;

(3) If he is a member under any other Charter provision, he has rendered 10 or more years of continuous service.

(b) If such medical examination and other available evidence show, to the satisfaction of the Retirement Board, that the member is physically or mentally incapacitated for the performance of duty and ought to be retired; and, if he be a member under Section 8.540 or 8.565 of the Charter, or a member under Section 8.543 or 8.567 of the Charter, and has not had 10 or more years of continuous City and County service, that the disability is the result of bodily injury received in the performance of duty, then the Retirement Board shall retire the member for disability forthwith.

(c) The Retirement Board shall secure such medical services and advice as may be necessary to carry out the purposes of this Section and of Section 16.74 of this Code, and shall pay for such medical services and advice such compensation as the Board shall deem reasonable. (Bill No. 1125, by Ord. No. 4.073(C S.), Sec. 54)

**SEC. 16.74. DISABILITY RETIREMENT—
MEDICAL EXAMINATIONS; RE-ENTRY
INTO SERVICE; ENGAGING IN GAINFUL
OCCUPATION AFTER RETIREMENT
PERIOD.**

(a) The Retirement Board may, at its pleasure, require any beneficiary who has been retired for disability and who has not attained the age of 62 years, to undergo a medical examination, such examination to be made by a physician or surgeon appointed by the Retirement Board,

at the place of residence of the beneficiary or other place mutually agreed upon. Upon the basis of such examination, the Board shall determine whether the disability beneficiary is still incapacitated, physically or mentally, for service in the office or department of the City and County where he was employed and in the position held by him when retired for disability. If the Retirement Board shall determine that the beneficiary is not so incapacitated, his retirement allowance shall be cancelled forthwith, and he shall be reinstated to the position of the same class as that held by him when retired for disability.

(b) Should a beneficiary after retirement for disability re-enter the City and County service and be eligible for membership in the Retirement System, his retirement allowance shall be cancelled and he shall immediately become a member of the Retirement System. His individual account shall be credited with an amount which shall be the actuarial equivalent, at the time of such re-entry, based on a disabled life, of the annuity which would have been purchased by his accumulated contributions at the time he or she retired. Such amount shall not exceed the City and County accumulated contribution held for his benefit on account of service as a member, at the time of his retirement. Such member shall also receive credit for prior service in the same manner as it was at the time of his retirement.

(c) Should any retired person, except persons retired for service prior to January 8, 1932, and persons retired because of disability incurred in the performance of duty, engaged in a gainful occupation, prior to attaining age 62, the Retirement Board shall reduce the amount of his monthly pension as defined in this Article to an amount which, when added to the compensation earned monthly by him in such occupation, shall not exceed the amount of the compensation on the basis of which his retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the Board may further alter his pension to an amount which shall not exceed its amount when he was originally retired, but which, subject to such limitation, shall equal, when added to the compensa-

tion earned by him the amount of his compensation on the basis of which his retirement allowance was determined. When the beneficiary reaches age 62, his retirement allowance shall be made equal to the amount upon which he was originally retired, and shall not again be modified for any cause.

(d) Should any beneficiary retired for disability refuse, under age 62, to submit to a medical examination, his pension may be discontinued until his withdrawal of such refusal, and should such refusal continue for one year, his retirement allowance may be cancelled. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec. 56; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.75. OPTIONAL MODIFICATIONS OF ALLOWANCES.

Until the first payment on account of any retirement allowance is made, a member or a retired person, except persons who are members under Section 8.565 of the Charter, may elect to receive the actuarial equivalent of his retirement allowance payable throughout his life with the provision that:

Option 1. If he dies before he receives in lesser annuity payments the amount of his accumulated contributions as it was at his retirement, the balance of such accumulated contributions shall be paid to his estate or to such person as he shall nominate by written designation duly executed and filed with the Retirement Board at the time of his election; or

Option 2. Upon his death, his lesser retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly executed and filed with the Retirement Board at the time of his election; or

Option 3. Upon his death, one-half of his lesser retirement allowance shall be continued throughout the life of and paid to such person as he shall nominate by written designation duly executed and filed with the Retirement Board at the time of his election.

Said election of option shall be made by signing and filing with the Retirement Board a

notarized election of option on a form provided by the Retirement Board; provided, however, that if a retired person shall die before the first payment on account of his retirement allowance is made, such election of option shall be considered void and of no effect and his death shall be considered as that of a member before retirement, unless:

(a) Such retired person has elected Option 2 or 3; or

(b) Such person was retired on or after April 1, 1966, as a member under Section 8.507 or 8.509 of the Charter and such person has elected Option 1 and an allowance as provided in Subsection (d) of Section 16.80 of this Code is otherwise payable upon his death. (Amended by Ord. 296-83, App. 5/27/83)

SEC. 16.75-1. OPTIONAL MODIFICATION OF BENEFITS FOR FORMER SPOUSE.

(a) If a domestic relations order requires a distribution to a former spouse after a member qualifies for retirement but before commencement of a member's pension, the retirement system may undertake such payments provided that such order conforms with the terms, conditions, and actuarial assumptions of the plan and provided further that the amount of any payments to be distributed to a former spouse plus interest shall be offset by either reductions in lump sum benefits or by an appropriate actuarial reduction of any allowance later payable to the member or a beneficiary.

(b) At the time of retirement or later, a member, or a retired member, may elect to receive the actuarial equivalent of his or her retirement allowance payable throughout his or her lifetime with the provision that:

During the member's lifetime, his or her lesser allowance shall be divided with a former spouse according to community property principles. Upon the member's death, the community property portion, not to exceed 50% of the reduced allowance, shall be payable to the former spouse throughout his or her lifetime.

The same portion of the normal cost-of-living adjustments that are payable to the former spouse during the member's lifetime will continue to be payable after the member's death.

A member may make this election after the first payment of a retirement allowance upon a determination that it is a bona fide and equitable division of the community property interest in the retirement allowance.

(c) Nothing in this Section shall be construed to obligate the retirement system to pay greater benefits than those otherwise payable by the terms of the plan. Any allowance otherwise payable to any other survivor may be reduced by the benefits authorized under this Section to the degree necessary to ensure that the Retirement System does not pay increased benefits. (Added by Ord. 210-89, App. 6/22/89)

SEC. 16.76. METHOD OF PAYMENT OF ALLOWANCES.

A pension, an annuity, retirement allowance or death benefit allowance granted under the provisions of this Article shall be payable in equal monthly installments or in smaller pro-rata amounts when the pension, annuity, retirement allowance or death benefit allowance begins after the first day of the month or ends before the last day of the month; provided, that nothing in this Article shall prevent the payment at shorter intervals of benefits under the compensation, insurance and safety law of the state. (Bill No. 1125, Ord. No 4.073(C.S.), Sec. 58)

SEC. 16.77. POSITION IN CITY SERVICE NOT PERMITTED AFTER RETIREMENT; EXCEPTIONS.

No person retired for service or disability and in receipt of a retirement allowance under the Retirement System shall serve in any elective or appointive position in the City and County service, including membership on boards and commissions, nor shall such person receive any payment for service rendered to the City and County after retirement; provided, that this section shall not apply to an election officer or juror or any

person elected to a City office, who waives pension payments under Section 16.87. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec 59; amended by Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.79. BENEFICIARIES.

"Beneficiary" means any person, except a corporation, designated by a member, or a retired member, to receive a benefit payable on account of the death of a member or a retired member. A member or retired member may also name the member's estate or trust as a beneficiary for any lump sum death benefits. If there is no effective beneficiary designation the benefit shall be paid to the estate of the member. (Amended by Ord. 296-83, App. 5/27/83; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.80. DEATH BENEFITS.

(a) **Death in Performance of Duty.** Upon the death of any person who is a member under Section 8.540 or 8.565 of the Charter, if such death shall result from his performance of duty as prescribed in such sections, respectively, or if such death in the case of members under Section 8.565 of the Charter shall occur after qualification for service retirement, there shall be paid to the widow, children or parents of such member, the benefits provided in such sections, for members at January 8, 1932, of the Police and Fire Departments, upon death resulting from the performance of duty and upon death occurring after qualification for service retirement. If such death after qualification for service retirement shall not result from the performance of duty and if there be no surviving wife, children or parents to whom benefits are payable under this subsection, the benefits provided in the next following subsection shall be paid to the beneficiary nominated by him as prescribed therein.

(b) **Death Not in Performance of Duty.** Upon the death before retirement, if such death be not included under Subsection (a) of this Section, of a member while in the city service, or within four months after the discontinuance of city service, or while physically or mentally incapacitated for performance of his duty, if such incapacity has been continuous from discontinu-

ance of city service, the retirement system shall be liable for a death benefit, which, if an amount be due under Paragraph (3) of this subsection, and if there be a surviving wife or surviving children, shall be paid in monthly installments and to the surviving wife and children as prescribed therein; otherwise, such death benefit shall be paid to his estate, or to such person as he has nominated or shall nominate by written designation duly executed and filed with the retirement board, and such death benefit shall consist of:

(1) His accumulated contributions, and in addition thereto.

(2) An amount equal to the compensation earnable by him during the six months immediately preceding his death.

(3) An amount sufficient, when added to the amounts provided in the next preceding Paragraphs (1) and (2), to provide, when applied according to mortality tables adopted by the board, a monthly death benefit equal to $\frac{1}{2}$ of the monthly compensation earnable by such member during the 10 years immediately preceding his death, to be paid to the surviving wife to whom such member was married prior to sustaining the injury, to continue as long as she shall live or until her remarriage; or, if there be no widow, or if the widow die before any child of such deceased member shall have attained the age of 16 years, then to his child or children under such age collectively, to continue until every such child dies or attains such age. If payment of the allowance be stopped because of remarriage of the widow or attainment of the age of 16 years by a child, before the sum of monthly payment made shall equal the sum of the amounts provided in the next preceding Paragraphs (1) and (2), then an amount equal to the difference between such sums shall be paid in one amount to the remarried widow; or, if there be no widow to the surviving children of the deceased member, to share and share alike.

(c) **Designation of Beneficiary.** A member, or a beneficiary after the death of a member, may elect, by written designation duly executed and filed with the retirement board, to have the

death benefit provided in this Section paid in monthly or annual installments instead of in one lump sum, subject to such rules and regulations as the board may adopt.

(d) **Death After Retirement.** Upon the death of any person, except persons referred to in Sections 8.542 and 8.566 of the Charter, after retirement and while receiving a retirement allowance from the retirement system, there shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the Retirement Board, the sum of \$100 for each completed year of city service credited to him at the time of his retirement, but the total amount paid shall not exceed \$3,000; provided, that the sum so paid upon the death of a person who was receiving a retirement allowance under the San Francisco City and County Employees' Retirement System on January 8, 1932, or of a person who became a member of the retirement system by reason of his status as an employee of the public utility acquired by the City shall be not less than \$500, regardless of the City service credited. If such deceased person was retired as a member under Sections 8.507 or 8.509 of the Charter and his retirement was first effective on or after April 1, 1966, an allowance shall be paid to his widow, until her death or remarriage, equal to $\frac{1}{2}$ of his retirement allowance as it was prior to optional modification and prior to reduction as provided in Subsection (A) of Charter Section 8.514, but exclusive of the part of such allowance which was provided by additional contributions. No allowance, however, shall be paid under this Section to a widow unless she was married to the member at least one year prior to the member's death. If he leaves no such widow, or if she should die or remarry before every child of such deceased retired person attains the age of 18 years, then the allowance which such widow would have received had she lived and not remarried shall be paid to his child or children under said age, collectively, to continue until every such child dies or attains said age, provided that no child shall receive any allowance after marrying or attaining the age of 18 years. If the member, at retirement, has no wife who upon his death would qualify as a

widow to receive the allowance provided in this subsection, he may elect an option, as provided under Section 16.75 of this Code, with respect to all of his allowance but if at his retirement he has such a wife, he may elect such option only with respect to that part of his retirement allowance, prior to reduction as provided in Charter Section 8-514, which is in excess of the allowance which would be paid to his widow under this paragraph. The funds for payments under this paragraph shall be derived:

(1) With respect to persons retired as members under Charter Sections 8.509, 8.544 and 8.568 from reserves held by the retirement system on account of members under such sections, respectively, and

(2) With respect to persons retired as members under Charter Sections 8.507, 8.543, and 8.567 from the accumulated contributions of the City held to meet the obligation of the City on account of benefits that have been granted and on account of prior service of members. Upon the death of any person after retirement and while receiving a pension under Sections 8.542 or 8.566 of the Charter, as a retired member of the Police or Fire Department, there shall be paid to his estate or to such person as he shall have nominated by written designation duly executed and filed with the retirement board, the sum of \$3,000. The death benefits provided in this paragraph with respect to persons retired under Charter Sections 8.542 or 8.565, shall be funded by contributions to the retirement system by the City which shall not be less in any fiscal year than the amount of such benefits paid during said year.

(e) **Revocation of Nomination of Beneficiary.** A person, while a member or after retirement, shall have the right to revoke the nomination of a beneficiary made by him under the retirement system, and to nominate a beneficiary in lieu thereof, all by written designation duly executed and filed with the Retirement Board; provided, that this right shall not extend to beneficiaries nominated under Options 2 and 3 of Section 16.75 of this Code, nor shall it extend to dependents designated as beneficiaries by

State law, the Charter or this Article, to receive benefits payable on account of death or disability incurred in the performance of duty. (Amended by Ord. 53-85, App. 2/2/84; Ord. 326-00, File No. 001921, App. 12/28/2000)

SEC. 16.80-1. DEATH AFTER RETIREMENT—PERSONS RETIRED PRIOR TO APRIL 1, 1966.

Upon the death on or after the effective date of this Section of a person who at the time of his death was receiving a retirement allowance as a person retired under Section 8.507 or 8.509 of the Charter and whose retirement allowance was first effective prior to April 1, 1966, an allowance shall be paid to his widow, until her death or remarriage, equal to $\frac{1}{2}$ of his retirement allowance as it was prior to optional modification and prior to reduction as provided in Subsection (A) of Section 8.514 of the Charter, but exclusive of the part of such allowance which was provided by additional contributions. No allowance, however, shall be paid under this Section to a widow unless she was married to such retired person at least one year prior to his retirement. If he leaves no such widow, or if she dies or remarries before every child of such deceased retired person attains the age of 18 years, the allowance which such widow would have received had she lived and not remarried shall be paid to his child or children under said age, collectively, to continue until every such child dies or attains said age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years; it is provided however, that:

(a) If on the effective date of this Section, such a retired person has a wife who upon his death would qualify as a widow to receive the allowance provided in this subsection; and

(b) If such person at the time of his retirement elected Option 2 or Option 3 as provided under Section 16.75 of this Code; then

(c) The allowance of such retired person shall be recomputed as of the effective date of this Section, so that the option so elected shall apply only with respect to that part of his retire-

ment allowance, prior to reduction as provided in Charter Section 8.514, which is in excess of the allowance which would be paid to his widow under this paragraph.

The funds for payments under this Section shall be derived in the same manner as provided in Paragraphs (1) and (2) of Subsection (d) of Section 16.80 of this Code for other benefits payable on account of the death of retired persons.

This Section does not give any person retired prior to April 1, 1966, or his successors in interest, any claim or right against the City and County for any increase in or modification of any retirement allowance in effect prior to April 1, 1966, other than as specifically provided in this Section; nor for any increase in allowances paid or payable prior to the effective date of this Section. (Added by Ord. 152-67, App. 6/21/67)

SEC. 16.80-2. DEATH AFTER RETIREMENT—PERSONS RETIRED PRIOR TO APRIL 1, 1966.

Upon the death on or after the effective date of this Section of a person who at the time of his death was receiving a retirement allowance as a person retired under Section 8.507 or 8.509 of the Charter and whose retirement allowance was first effective prior to April 1, 1966, the allowance provided pursuant to Section 16.80-1 of this Code shall be payable to his widow, notwithstanding the requirement of Section 16.80-1 that such widow shall have been married to such person at least one year prior to his retirement, provided, however, that no such allowance shall be payable to such widow unless she was married to such person (1) at least one year prior to such person's death if she married him prior to his retirement, or (2) at least two years prior to such person's death if she married him after his retirement. (Added by Ord. 133-69, App. 4/18/69)

SEC. 16.80-3. DEATH AFTER RETIREMENT—PERSONS RETIRED PRIOR TO APRIL 1, 1966, WHO DIED PRIOR TO EFFECTIVE DATE OF SECTION 16.80-1.

The provisions of this Section 16.80-3 shall apply only to retirement allowances which on the effective date of this Section are being paid under Option 3 to widows of persons who:

(a) Died prior to the effective date of Section 16.80-1 of this Code, and

(b) At the time of their deaths were receiving retirement allowances first effective prior to April 1, 1966, as persons retired under Section 8.507 or Section 8.509 of the Charter.

Effective July 1, 1972, said Option 3 with respect to each of said retirement allowances is hereby revoked and for time on and after July 1, 1972, each such widow shall receive an allowance in an amount equal to $\frac{1}{2}$ of her husband's retirement allowance as it was prior to optional modification under said Option 3.

The provisions of this Section 16.80-3 shall not give any beneficiary, or her successors in interest, any claim or right against the City and County for any increase in or modification of any retirement allowance in effect prior to April 1, 1966, other than as specifically provided in this Section; nor for any increase in allowance paid or payable for time prior to July 1, 1972. (Added by Ord. 212-72, App. 8/1/72)

SEC. 16.80-4. RETIREMENT ALLOWANCE UNDER OPTIONAL PAYMENT PLAN NO. 2 OR NO. 3.

The retirement allowance of any person who retired under Section 8.507 or 8.509 of the Charter and who, at retirement, selected optional payment plan No. 2 or No. 3 as provided in Section 16.75 of this Code, shall be recomputed in accordance with the provisions of this Section, if the person designated to receive the lesser allowance after the death of said retired person subsequently qualifies as a wife who would be eligible as a widow to receive the allowance provided in Paragraph (d) of Section 16.80 of this Code.

Such allowance shall be recomputed so that the optional payment plan selected shall apply only with respect to that part of such retired person's retirement allowance which is in excess of the allowance which would be paid to his widow under the provisions of Paragraph (d) of Section 16.80 of this Code. Said recomputation shall be made as of the date on which said designated person qualifies as an eligible wife or on the effective date of this ordinance, whichever is later; and the allowance as so recomputed shall be payable for time on and after the date of said recomputation.

This ordinance does not and shall not give any retired person, or his successors in interest, any claim against the City and County for an increase in any allowance paid or payable for time prior to the date of said recomputation. (Amended by Ord. 107-70, App. 4/8/70)

SEC. 16.80-5. DEATH AFTER RETIREMENT—ALLOWANCES PAYABLE WITHOUT MODIFICATION OR PURSUANT TO OPTIONS 1 OR 2.

The provisions of this Section 16.80-5 shall apply only to unremarried widows of persons who retired prior to April 1, 1966, as members under Section 8.507 of Section 8.509 of the Charter, and who died prior to the effective date of Section 16.80-1 of this Code, provided such widows would have been entitled to the automatic $\frac{1}{2}$ continuation of allowance under Section 16.80-1 of this Code if Sections 16.80-1 and 16.80-2 had been in effect on the date of their husbands' deaths.

(a) If at retirement such widow's husband elected to receive his allowance without optional modification or after modification under Option 1, such widow shall receive, for time commencing January 1, 1973, an allowance in an amount equal to $\frac{1}{2}$ of the amount of her husband's retirement allowance as it was at his death.

(b) If at retirement such widow's husband elected to receive his allowance after modification under Option 2, such widow shall receive, for time commencing January 1, 1973, an allowance in an amount equal to the total of:

(1) An amount equal to $\frac{1}{2}$ of the amount of her husband's retirement allowance without optional modification;

(2) An amount determined by recomputing as of January 1, 1973, the allowance of such widow so that Option 2 shall apply only with respect to that part of her husband's allowance without optional modification which is in excess of the amount in Subdivision (1) of this Subsection (b);

(3) An amount equal to the total of all increases made in such widow's allowance pursuant to Subsections (A) and (B) of Section 8.526 of the Charter (formerly Section 164.1 of the Charter of 1932).

The allowances determined pursuant to the provisions of Subsections (a) and (b) of this Section shall be the allowances upon which adjustments pursuant to Section 8.526 of the Charter shall be based.

The provisions of this Section 16.80-5 shall not give any beneficiary or her successors in interest, any claim or right against the City and County for any increase in or modification of any retirement allowance in effect prior to April 1, 1966, other than as specifically provided in this Section; nor for any increase in allowance paid or payable for time prior to January 1, 1973. (Added by Ord. 62-73, App. 2/23/73)

SEC. 16.80-6. DEATH AFTER RETIREMENT—CONTINUATION TO SURVIVING SPOUSE OF FEMALE MEMBER.

Upon the death on or after the effective date of this Section of a female member who at the time of her death is receiving a retirement allowance as a person retired under Sections 8.507 or 8.509 of the Charter (formerly Sections 165 and 165-2 of the Charter of 1932), an allowance shall be paid to her surviving husband, until his death or remarriage, equal to $\frac{1}{2}$ of her retirement allowance as it was prior to optional modification, but exclusive of the part of such allowance which was provided by additional contributions. No allowance, however, shall be paid under this Section to a surviving husband unless he was married to such member for at least one year prior to the member's death.

If she leaves no such surviving husband, or he dies or remarries before every child of such deceased female member attains the age of 18 years, then the allowance which such surviving husband would have received had he lived and not remarried shall be paid to her child or children under said age, collectively, to continue until every such child dies or attains said age; provided, that no child shall receive any allowance after marrying or attaining the age of 18 years.

If a female member whose retirement will be effective on or after the effective date of this Section does not have, at retirement, a husband who upon such member's death would qualify as a surviving husband to receive the allowance provided in this Section, she may elect an option, as provided under Section 16.75 of this Code, with respect to all of her allowance; but if, at her retirement, she has such a husband, she may elect such option only with respect to that part of her retirement allowance which is in excess of the allowance which would be paid to her surviving husband under this Section.

The funds for payments under this Section shall be derived:

(a) With respect to persons retired as members under Section 8.507, from the accumulated contributions of the City and County held to meet the obligation of the City and County on account of benefits that have been granted and on account of prior service of members, and

(b) With respect to persons retired as members under Section 8.509, from reserves held by the Retirement System on account of members under said section. (Amended by Ord. 53-84, App. 2/2/84)

SEC. 16.80-6.1. DEATH AFTER RETIREMENT—CONTINUATION TO HUSBAND OF RETIRED FEMALE MEMBER WHO DIED PRIOR TO EFFECTIVE DATE OF SECTION 16.80-6.

The provisions of this Section 16.80-6.1 shall apply only to unremarried husbands of female members who retired prior to the effective date of Section 16.80-6 of this Code, as members

under Section 8.507 or Section 8.509 of the Charter, and who died prior to the effective date of said Section 16.80-6, provided such husbands would have been entitled to the automatic $\frac{1}{2}$ continuation of allowance under said Section 16.80-6 if said Section 16.80-6 had been in effect on the date of their wives' deaths.

(a) If at retirement such husband's wife elected to receive her allowance without optional modification or after modification under Option 1, such husband shall receive, for time commencing July 1, 1975, an allowance in an amount equal to $\frac{1}{2}$ of the amount of his wife's retirement allowance as it was at her death.

(b) If at retirement such husband's wife elected to receive her allowance after modification under Option 2 and designated her husband as beneficiary under said Option 2, such husband shall receive, for time commencing July 1, 1975, an allowance in an amount equal to the total of:

(1) An amount equal to $\frac{1}{2}$ of the amount of his wife's retirement allowance without optional modification;

(2) An amount determined by recomputing as of July 1, 1975, the allowance of such husband so that Option 2 shall apply only with respect to that part of his wife's allowance without optional modification which is in excess of the amount in Subdivision (1) of this Subsection (b):

(3) An amount equal to the total of all increases made in such wife's allowance pursuant to Subsection (A) and (B) of Section 8.526 of the Charter (formerly Section 164.1 of the Charter of 1932).

(c) If at retirement such husband's wife elected to receive her allowance after modification under Option 3 and designated her husband as beneficiary under said Option 3, said Option 3 is hereby revoked effective July 1, 1975, and, for time commencing July 1, 1975, such husband shall receive an allowance in an amount equal to $\frac{1}{2}$ of his wife's retirement allowance as it was prior to optional modification under said Option 3.

The allowances determined pursuant to the provisions of Subsections (a), (b) and (c) of this

Section shall be the allowances upon which adjustments pursuant to Section 8.526 of the Charter shall be based.

The provisions of this Section 16.80-6.1 shall not give any beneficiary, or his successors in interest, any claim or right against the City and County for any increase in or modification of any retirement allowance in effect prior to the effective date of this Section, other than as specifically provided in this Section; nor for any increase in any allowance paid or payable for time prior to July 1, 1975. (Added by Ord. 207-75, App. 5/21/75)

SEC. 16.80-7. RETIREMENT ALLOWANCE OF FEMALE WITH SURVIVING SPOUSE.

The retirement allowance of any female person who retired under Section 8.507 or 8.509 of the Charter and who, at retirement, selected optional payment plan No. 2 or No. 3 as provided in Section 16.75 of this Code, shall be recomputed in accordance with the provisions of this Section, if the person designated to receive the lesser allowance after the death of said retired person qualifies as a husband who would be eligible as a surviving husband to receive the continuation of allowance provided in Section 16.80-6 of this Code.

Such allowance shall be recomputed so that the optional payment plan selected shall apply only with respect to that part of such retired person's retirement allowance which is in excess of the allowance which would be paid to her surviving husband under the provisions of Section 16.80-6 of this Code. Said recomputation shall be made as of January 1, 1973; and the allowance as so recomputed shall be payable for time on and after the date of said recomputation.

This ordinance does not and shall not give any retired person, or her successors in interest, any claim against the City and County for an increase in any allowance paid or payable for time prior to the date of said recomputation. (Added by Ord. 286-73, App. 7/20/73)

SEC. 16.81. BENEFITS UNDER PUBLIC EMPLOYEES' RETIREMENT SYSTEM.

The Retirement Board shall administer and determine applications, under Section 21023.6 of

the Government Code, for disability retirement by employees of the City and County who are "local safety members" under the Public Employees' Retirement System of the State of California. The Retirement Board is hereby authorized and empowered to perform on behalf of the City and County all of the acts required under the provisions of said Section 21023.6 of the Government Code.

In those cases in which there is a dispute whether the employee's disability is industrial, the Retirement Board may apply to the Workers' Compensation Appeals Board for a determination of said question. In those cases in which the effective date of retirement is to be the date on which the disabling condition became permanent and stationary, the Retirement Board shall apply to the Workers' Compensation Board for a determination of such date.

The Retirement Board is hereby authorized and empowered to make applications on behalf of the City and County for disability retirement of employees in employments in which they are "local safety members" under the Public Employees' Retirement System and to initiate requests for reinstatement of such employees who are retired for disability.

The Retirement Board may adopt such rules and regulations as it deems appropriate and necessary to carry out the provisions of this Section. (Amended by Ord. 314-74, App. 6/27/74; Ord. 18-95, App. 1/25/95)

SEC. 16.82. ADMINISTRATION OF BENEFITS UNDER WORKERS' COMPENSATION ACT.

Effective December 31, 1994, the Board of Supervisors authorizes and directs the Human Resources Director to administer cases of injuries to employees, received in performance of duty. Administration of such cases shall include, but shall not be limited to:

(1) Determination of the right to benefits, payment of disability indemnity, furnishing medical service, adjusting and compromising claims and all other acts necessary to the liquidation of the liability of the City under such law;

(2) Exclusive authority to adjust and settle workers' compensation and third-party claims under Labor Code Sections 3600 and 3850 and related sections;

(3) Authority to insure, self-insure or reinsure the workers' compensation liability of the City, the San Francisco Unified School District and the Community College District (hereinafter the "City");

(4) Authority to adopt such rules and regulations as he or she deems appropriate and necessary to liquidate the liability of the City under the workers' compensation laws;

(5) Authority to adopt such rules and regulations as he or she deems appropriate and necessary to cover volunteers under the provisions of Labor Code Section 3363.5;

(6) The power and authority to compel the attendance of witnesses and the production of books, papers, testimony and other evidence by subpoena in connection with any inquiry, matter, proceeding or hearing relating to the administration of workers' compensation claims involving the City. Any person refusing to obey such subpoena or to produce such books, papers, testimony or other evidence shall be deemed in contempt and subject to proceedings and penalties as provided by general law in such instances;

(7) Authority to arrange for hospitalization and medical treatment at such hospitals or other medical facilities as necessary and appropriate for employees who have been injured in the performance of duty. The Human Resources Director shall submit an annual report to the Board of Supervisors not later than September 30th of each year which includes the costs of the aforesaid hospitals and other medical providers;

(8) The responsibility to keep records and accounts on self-insured, insured and reinsured risks, sufficient to permit a determination of which policy, to self-insure, insure or reinsure, is for the best interests of the City. The Human Resources Director shall determine, on the basis of payrolls, the budget necessary during each fiscal year to meet the City's workers' compensation obligations. Each office and department shall furnish such information concerning em-

ployees therein as the Human Resources Director may require in carrying out the provisions of this Section.

The Human Resources Director, at the request of the Retirement Board, shall also have the authority to secure such medical services and advice as may be necessary to process disability retirement applications. The Retirement Board shall pay all costs and expenses applicable to processing and adjudicating disability retirement applications. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec. 65; amended by Ord. 18-95, App. 1/25/95)

SEC. 16.84. EFFECT OF COMPENSATION BENEFITS ON OTHER BENEFITS UNDER ARTICLE.

No modification of the benefits provided in this Article shall be made on account of any amounts payable to a beneficiary under the Compensation, Insurance and Safety Act, except that the portion of any retirement allowance or other benefit which is provided by contributions of the City and County, payable by the Retirement System because of the death or retirement of any member of the Fire or Police Department, as a result of injury or illness received in performance of duty shall be reduced by the amount of any benefits, other than medical benefits, payable to or on account of such member under the Workers' Compensation, Insurance and Safety Act of the State of California because of his death or the disability resulting in his retirement.

If such benefits under the Compensation Act shall run concurrently with the allowance under this Article and shall be due the beneficiary in payments which are equal to or less than the portion of the retirement allowance, then such portion shall be reduced each month by the amount of such other benefits so due during the month, and the beneficiary shall have no more right to such reduction than if the Retirement System had never existed.

If such benefits under the Compensation Act shall run concurrently with the allowance under this Article and shall be due to the beneficiary in payments which are greater than the portion of

the retirement allowance, then payment of the portion shall be withheld until the total of the amounts so withheld shall equal the total of such other benefits paid, and the beneficiary shall have no more right to such amounts withheld than if the Retirement System had never existed.

It is the purpose of the preceding paragraph of this Section to reduce the pension portion of the retirement allowance payable from the Retirement Fund by the amount due to the beneficiary concurrently with such portion under the Compensation Act, and the payment before due date by the commutation through compromise or otherwise of such other benefits shall not prevent the reduction of such portion, as provided in this Section, in the amounts which would have been payable concurrently with the retirement allowance in the absence of such commutation.

If any benefits, other than medical benefits, shall have been paid concurrently with salary to the beneficiary under the Compensation Act because of a permanent disability, then payment of such portion of the retirement allowance shall be withheld until the total of the amounts so withheld shall equal the total of such benefits paid because of the permanent disability, and the beneficiary shall have no more right to such amounts withheld than if the Retirement System had never existed.

Such benefits which are payable for time during which salary is not paid and prior to the effective date of the allowance shall not be considered under the provisions of this Section. (Bill No. 1125, Ord. No. 4.073(C.S.), Sec 67)

SEC. 16.85. POLICEMEN AND FIREMEN INCAPACITATED WITH HEART TROUBLE OR PNEUMONIA—WHEN PRESUMED CONTRACTED IN COURSE OF EMPLOYMENT.

Whenever any member of the Police Department or Fire Department shall become incapacitated for the performance of his duty on account of heart trouble or pneumonia, which develops or manifests itself while such member is in the service of his department, such heart trouble and

such pneumonia shall be presumed to arise out of and in the course of his employment, unless there is evidence to the contrary. (Ord. No. 559(1939), Sec. 1)

SEC. 16.86. POLICEMEN AND FIREMEN INCAPACITATED WITH HEART TROUBLE OR PNEUMONIA—APPLICATION TO MEMBERS WITH FIVE OR MORE YEARS OF SERVICE.

The provisions of the preceding section shall apply only to members of the Police and Fire Departments, respectively, who shall have served a total of five or more years:

- (a) in one or both of such departments; or,
- (b) as a San Francisco Airport police officer; or,
- (c) in another police or fire department in the State of California, provided that the member was entitled to the same presumption in his or her prior employment, and provided that the member became a member of the San Francisco Police or Fire Department within six months of separating from such prior employment.

The provisions of subsections (b) and (c) of this section shall apply only to injuries or deaths occurring after January 1, 2000, and only to applications for benefits under the San Francisco City and County Employees' Retirement System. In such cases, the member's prior safety service in another police or fire department shall be used by the Retirement System to measure the date upon which said member would have completed at least twenty-five (25) years of service in the aggregate. (Ord. No. 559(1939), Sec. 1; amended by Ord. 29-03, File No. 021913, App. 2/28/2003)

SEC. 16.87. WAIVER OF PENSIONS—SIGNING AND FILING; EFFECTIVE DATE; WAIVER FORMS.

A person entitled to receive a pension may decline to accept all or part of future payments of such pension by a waiver signed and filed with the Retirement Board. Such waiver shall become effective on the date stated in the waiver and shall remain in effect until the waiving person's death or his or her filing of a signed revocation

with the Retirement Board, whichever is earlier. Waivers and revocations shall be on forms furnished by the Retirement Board.

On and after January 1, 1992, any person elected to a City office, who waives pension payments under this Section, shall not be subject to the limitations on reemployment or payment for service in Charter Sections 8.509(j), 8.511, 8.559-13, 8.584-10, 8.585-13, 8.586-13 and 8.588-13. (Ord. No. 167-58, Sec. 1; amended by Ord. 1-92, App. 1/6/92)

SEC. 16.88-1. CONDITIONS UNDER SECTION 210(L) OF FEDERAL SOCIAL SECURITY ACT.

Sections 16.88-3, 16.88-4, 16.88-5, 16.88-6, 16.88-7 of this Article shall not be applicable to any position which is covered employment under Section 210(L) of the Federal Social Security Act (a) while occupied by a member prior to the federal execution date of a modification of the Master Federal-State old-age survivors and disability insurance agreement to extend coverage to members of the system under said act, unless he is a member who affirmatively exercised the option in Section 16.88-2 of this Article, or (b) while occupied at any time by a member who occupied any such position on such federal execution date, unless he is a member who affirmatively exercised the option in Section 16.88-2 of this Article, or (c) while occupied by any person prior to the effective date of coverage of members of the system under such agreement. (Added by Ord. 488-59, App. 9/14/59)

SEC. 16.88-2. MEMBER'S OPTION.

A member shall have the option to be exercised in writing on a form furnished by the system and to be filed in the office of the system not later than 180 days after the federal execution date of a modification of the Master Federal-State old-age survivors and disability insurance agreement, to extend coverage to members of the system under the Federal Social Security Act, to have Charter Section 8.514 as in effect on the effective date hereof or as amended or supplemented hereafter, applicable to positions which were covered employment under Section 210(L)

of said act (a) while occupied by him on and after the effective date of coverage of members of the system under such agreement, but prior to such federal execution date if he is a member who did not occupy any such position on such federal execution date, or (b) while occupied by him on and after the effective date of coverage of members of the system under such agreement, if he is a member who occupied any such position on such federal execution date. (Added by Ord. 488-59, App. 9/14/59)

SEC. 16.88-3. MEMBER COVERED UNDER FEDERAL SOCIAL SECURITY.

A member who becomes covered under the old-age survivors and disability insurance provisions of the Federal Social Security Act, on account of service rendered by him to the City and County, shall have the allowance payable by the system to him upon retirement for disability after attaining age 55, or for service reduced while payable to him and effective:

(a) When he attains the retirement age as defined from time to time in the old-age and survivors' disability insurance provisions of the Social Security Act, such age to be analogous to the retirement age of 65 years for men and 62 years for women in said act on the effective date of Section 8.514 of the Charter; or

(b) On the effective date of his retirement under the system, whichever is later:

—By an amount which shall bear the same ratio to $\frac{1}{2}$ of the old-age insurance benefit paid to him; or

—Payable upon being applied for; or

—That would be payable if he had not disqualified himself to receive them, under said act as in effect on the effective date hereof; or

—As said act may hereafter be amended or supplemented before the effective date of such reduction, as the salary paid to him on account of service (except service rendered in positions to which this Section is not applicable pursuant to Section 271, credited to him under the system, and entering into the determination of said old-

age benefit bears to the total of his earnings from whatever source, entering into said determination;

provided, however, that the amount of the reduction under this Section shall not exceed the portion of the retirement allowance, prior to modification under an option provided by ordinance, which is not derived from contributions of said member. For the purposes of this Section the salary paid to him in any calendar year on account of service, except service rendered in positions to which this Section is not applicable pursuant to Section 16.88-1, credited to him under the system, and entering into the determination of said primary benefit, shall be taken as the total salary paid to him in such year on account of such service which is not in excess of his total earnings in such year, from whatever source, entering into said determination.

Such reduction shall be applied first to the portion of his retirement allowance which is based on his service while a member of the system but which is not provided by his accumulated contributions, and if such reduction exceeds such portion the excess shall be applied to reduce the portion of his retirement allowance which is based on his service while not a member of the system and which is not provided by his accumulated contributions and if, because of his election of an option provided by ordinance, such excess exceeds such portion of his retirement allowance which is based on his service while not a member of the system and which is not provided by his accumulated contributions, or if there is no such portion, then such excess or the balance of it shall be applied to reduce the portion of his allowance which is provided by his accumulated contributions. (Added by Ord. 488-59, App. 9/14/59)

SEC. 16.88-4. MEMBER'S RIGHT TO REDUCE CONTRIBUTIONS.

Any such member shall have the right to reduce his normal contributions under the system on account of his compensation in any position, except positions to which this Section is not applicable pursuant to Section 16.88-1, at his option to be exercised by an election in writing on

a form furnished by the system, said election to be effective on the first day of the month next following the date on which it is filed in the office of the system.

Such reduction of normal contributions shall apply only to time during which said member is covered under the act, on and after the effective date of such election, and the amount of such reduction, which may be changed from time to time by said member in accordance with rules and regulations of the Retirement Board, shall not be more in any month than the amount of contributions deducted from his compensation for such month on account of his coverage under the old-age survivors and disability insurance provisions of the Federal Social Security Act. (Added by Ord. 488-59, App. 9/14/59)

SEC. 16.88-5. ALLOWANCE REDUCED.

Any allowance payable by the system to or on account of a member shall be reduced on the effective date of said allowance by the actuarial equivalent on said date, of the contributions, including interest to said date, with which the member would have been but was not credited under the system because of the reduction in his normal contributions pursuant to Section 16.88-4 and because of amounts paid from such member's accumulated contributions pursuant to Section 16.88-6 and any continuation of said allowance shall be based on such reduced allowances but said allowance shall not be affected otherwise by such reduction of his normal contributions, or by such amounts paid from his accumulated contributions. Such reduction shall be applied to the portion of his retirement allowance which would have been provided by his accumulated contributions as they would have been if his normal contributions had not been reduced, pursuant to Sections 16.88-4 and 16.88-6.

Said member shall have the right to contribute, in accordance with rules and regulations of the Retirement Board, amounts which shall be administered as additional contributions to replace all or part of such reduction in his retirement allowance. (Added by Ord. 488-59, App. 9/14/59)

SEC. 16.88-6. EFFECTIVE DATE OF COVERAGE UNDER SOCIAL SECURITY RETROACTIVE.

The effective date of coverage of members under the old-age and survivors disability insurance provisions of the Federal Social Security Act by a modification of the federal-state old-age and survivors disability insurance agreement shall be made retroactive to the earliest date permissible under said act. Contributions required of each member under said act for time prior to the federal execution date of such modification, and during which he was not in a position which was covered employment under Section 210(L) of the Federal Social Security Act, shall be paid from such member's accumulated contributions held by the system on account of his compensation not in excess of the maximum compensation taxable under said act for such retroactive time.

If the required contributions under said act exceed the member's accumulated contributions held by the system so determined, contributions under said act equal to the excess shall be paid by the member. Contributions required under said act of the employer on account of time prior to said execution date shall be paid from funds held by the system on account of active members and derived from contributions of the City and County. (Added by Ord. 488-59, App. 9/14/59)

SEC. 16.88-7. RETIREMENT BEFORE MINIMUM AGE UNDER SOCIAL SECURITY.

Any member upon his retirement for service before attainment of the minimum age of qualification for his primary benefit under the old-age and survivor disability insurance provisions of the Federal Social Security Act, may elect to adjust his retirement allowance under the system, effective on the effective date of such allowance, by an increase from time prior to his attainment of such age and a decrease for time on and after his attainment of such age, provided that: (1) the amount of the increase and decrease shall be actuarially equivalent; (2) the adjustment shall be based on an estimated reduction in his retirement allowance pursuant to the provi-

sions of Section 16.88-3 of this Article, if determined in accordance with the provisions of said act as in effect on the effective date of his retirement under the system, and by taking into account only his coverage under said Act, prior to said effective date; (3) the increase shall not be modified under an option provided by ordinance; (4) such election shall be irrevocable; (5) such election may not be executed earlier than 90 days before the effective date of his retirement allowance, and shall be effective only if executed on a form provided by the Retirement System and filed in the office of the system prior to the date on which the first payment on account of his retirement allowance is made. (Added by Ord. 488-59, App. 9/14/59)

Sec. 16.89-1.

(Added by Ord. 322-67, App. 12/20/67; repealed by Ord. 251-00, File No. 001491, App. 10/27/2000)

Sec. 16.89-2.

(Added by Ord. 222-68, App. 7/31/68; repealed by Ord. 251-00, File No. 001491, App. 10/27/2000)

SEC. 16.89-3. PURPOSE.

Sections 16.89-3 through 16.89-14 are enacted pursuant to the provisions of Section 8.506-1 of the Charter to implement the provisions of Chapter 239 of the Statutes of 1972 and amendments thereto. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-4. PERSONS AFFECTED.

The provisions of Sections 16.89-3 through 16.89-7 concern and are applicable only to teachers of the San Francisco Unified School District and the San Francisco Community College District who were members of the San Francisco City and County Employees' Retirement System on June 30, 1972, and who thereafter elected in accordance with Section 14116.4 of the Education Code, to be members solely of the State Teachers' Retirement System with respect to credentialed service rendered in the San Francisco Unified School District and the San Francisco Community College District and said sec-

tions do not concern and are not applicable to teachers of the San Francisco Unified School District or San Francisco Community College District who were members of the San Francisco City and County Employees' Retirement System on June 30, 1972, and who thereafter elected, in accordance with Section 14116.4 of the Education Code to be members of the San Francisco City and County Employees' Retirement System with respect to credentialed service rendered in the San Francisco Unified School District and the San Francisco Community College District. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-5. ELECTION BY PERSON WHO "VESTED."

Any teacher who was a member of the State Teachers' Retirement System and the San Francisco City and County Employees' Retirement System because of credentialed service rendered in the San Francisco Unified Schools District or San Francisco Community College District and who prior to February 15, 1973, made an election pursuant to Subsection (F) of Section 8.509 of the Charter (formerly Section 165.2 of the Charter of 1932) to allow his accumulated contributions to remain in the Retirement Fund shall have the right to make the election provided in Section 14116.4 of Education Code. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-6. HEALTH SERVICE SYSTEM COVERAGE.

A teacher who elects, in accordance with Section 14116.4 of Education Code, to be a member of State Teachers' Retirement System shall not be prevented from participating in the benefits of the Health Service System because of such election; provided, such teacher would otherwise have been eligible to participate in the benefits of said Health Service System.

The contributions required of such teachers who are members of the Health Service System shall be equal to the contributions required from active employee members in the Health Service System.

Upon, and if otherwise eligible, such teacher retirement shall be considered a retired member

for purposes of determining the contributions required of him pursuant to the provisions of Subsection (c) of Section 8.428 of the Charter. (Added by Ord. 363-72, App. 12/20/72)

SEC. 16.89-7. DEATH BENEFIT.

Upon the death, prior to retirement, of a teacher who is a member of the State Teachers' Retirement System and who has elected to retain credit in the San Francisco City and County Employees' Retirement System for adult program or evening school service or for classified or other noncertificated service, a death benefit shall be paid to his estate or designated beneficiary consisting of the sum of \$1,000 plus his accumulated contributions and interest credited thereon; provided, however, that said sum of \$1,000 shall not be payable if there is payable by the State Teachers' Retirement System a lump sum death benefit. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-8. HEALTH SERVICE SYSTEM COVERAGE—POST 6/30/72 TEACHERS.

Teachers first employed by the San Francisco Unified School District or San Francisco Community College District after June 30, 1972, shall not be prevented from participating in the benefits of the Health Service System because such teachers are not members of the San Francisco City and County Employees' Retirement System and they shall be entitled to participate in the benefits of the Health Service System if they are otherwise eligible to participate in the benefits of that system. The contributions required of such teachers who are members of the Health Service System shall be equal to the contributions required from active employee members in the Health Service System.

Upon retirement under the State Teachers' Retirement System and, if otherwise eligible, such teachers shall be considered retired members for purposes of determining the contributions required of them pursuant to the provisions of Subsection (c) of Section 8.428 of the Charter. (Added by Ord. 363-72, App. 12/20/72)

SEC. 16.89-9. ELECTION FOR REFUND—BENEFITS FOR CREDITED SERVICE.

At the time of the making of the election provided by Section 14116.4 of the Education Code, a teacher having credit in the San Francisco City and County Employees' Retirement System for adult program or evening school service or for classified or other noncertificated service who elects to be a member solely of the State Teachers' Retirement System with respect to credentialed service rendered in the San Francisco Unified School District or the San Francisco Community College District shall also make an irrevocable election either to retain credit in the San Francisco City and County Employees' Retirement System for such service or to have his accumulated contributions attributable to such service, together with interest credited thereon, refunded to him.

If a teacher elects to have his accumulated contributions attributable to such service refunded, he shall be entitled to refund only of those contributions attributable to adult program or evening school service for which he is not entitled to credit in the State Teachers' Retirement System.

If a teacher elects to retain credit in the San Francisco City and County Employees' Retirement System for adult program or evening school service, he shall be entitled to credit in said retirement system for all adult program or evening school service which he renders after June 30, 1972, in the San Francisco Unified School District and San Francisco Community College District and shall make contributions to the Retirement Fund by way of deduction from each payment of compensation for such service in accordance with such teacher's rate of contribution.

If a teacher elects to retain credit in the San Francisco City and County Employees' Retirement System for adult program or evening school service or for classified or other noncertificated service, at the time of his retirement for service under the State Teachers' Retirement System, he shall be entitled to receive from the San

Francisco City and County Employees' Retirement System a retirement allowance as follows:

(a) If such teacher is not qualified for service retirement under the San Francisco City and County Employees' Retirement System on the basis of service credited in said retirement system, his retirement allowance shall be the actuarial equivalent of his accumulated contributions attributable to his credited service, with interest credited thereon, and an equal amount of the contributions of the Unified School District or the Community College District.

(b) If such teacher is qualified for service retirement by reason of service credited in the San Francisco City and County Employees' Retirement System and his retirement is first effective after his attainment of the age of 60 years, his retirement allowance shall be at the rate of two percent of his average final compensation for each year of such credited service in the San Francisco City and County Employees' Retirement System. The service retirement allowance of such teacher retiring prior to attaining the age of 60 years shall be such as can be provided at the age of retirement by the actuarial value, at the age of retirement, of the retirement allowance to which he would be entitled upon retirement at age 60 with the service credited at the date of actual retirement.

For purposes of this subsection, a teacher shall be deemed to be qualified for service retirement if he would have been qualified for service retirement under the San Francisco City and County Employees' Retirement System on the basis of his credited service in said retirement system plus such certificated service as would have been credited under said retirement system if he had not elected to become a member of the State Teachers' Retirement System with respect to certificated service rendered after June 30, 1972.

"Average final compensation," as used in this subsection, shall mean the average monthly compensation earned by such teacher during any year of credited service in the San Francisco City and County Employees' Retirement System or State Teachers' Retirement System in which his average final compensation is the highest.

For the sole purpose of determining qualification for service retirement under this subsection, 36 hours or more of service shall be deemed a year of service. (Amended by Ord. 286-74, App. 6/6/74)

SEC. 16.89-10. FUNDS TO BE DEPOSITED WITH STATE TEACHERS' RETIREMENT SYSTEM.

The Retirement System shall deposit with the State Teachers' Retirement System as of July 1, 1973, the amounts required pursuant to Section 14116.11 of Education Code.

If the accumulated contributions of a teacher are less than the amount required to be deposited with the State Teachers' Retirement System with respect to such teacher, the necessary additional funds shall be provided from the accumulated reserves attributable of the Unified School District or Community College District; provided, however, that any shortage in the accumulated contribution account of a teacher which results from any of the following circumstances shall be the liability of such teacher and it shall be his responsibility to deposit the amount of such shortage with the State Teachers' Retirement System:

(a) Reduction of contributions to the Retirement System by the amount of social security tax;

(b) Use of a part of accumulated contributions for retroactive social security coverage;

(c) Failure to redeposit previously withdrawn contributions;

(d) Age correction,

(e) Payroll error resulting in insufficient deduction for Retirement System contribution;

(f) Membership under Section 8.507 of the Charter (formerly Section 165 of the Charter of 1932).

If the accumulated contributions of a teacher are in excess of the amount required to be deposited with the State Teachers' Retirement System, the amount of such excess shall be refunded to such teacher.

For the purposes of this Section, "accumulated contributions" shall mean the accumulated

contributions of a teacher attributable to credentialed service rendered by such teacher pursuant to his contract with the San Francisco Unified School District or San Francisco Community College District for time since July 1, 1956, and said accumulated contributions attributable to all credentialed service rendered by such teacher with the San Francisco Unified School District or San Francisco Community College District for time prior to July 1, 1956. Any amount of contributions in excess of those defined in the preceding sentence shall be refunded to the teacher. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-11. SERVICE CREDIT—POST 6/30/72 TEACHERS.

Teachers first employed by the San Francisco Unified School District or San Francisco Community College District after June 30, 1972, shall not be entitled to receive credit in the San Francisco City and County Employees' Retirement System for any service rendered in the San Francisco Unified School District or San Francisco Community College District. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-12. PERMANENT FUND BENEFIT.

Upon retirement under the San Francisco City and County Employees' Retirement System, a teacher shall receive from said Retirement System a benefit which shall be the permanent fund benefit which such teacher had earned through June 30, 1972, as a member of the State Teachers' Retirement System as such benefit existed in Subdivision (a) of Section 14240 of the Education Code on June 30, 1972.

A teacher may elect to waive the benefit provided in the immediately preceding paragraph of this Section and to receive in lieu thereof a refund of the permanent fund contributions credited to his account with the San Francisco City and County Employees' Retirement System. Such election shall be made on a form prescribed by the Retirement Board and shall be filed at the office of the Retirement Board on or before December 31, 1974. Such election shall be irrevocable upon its being filed.

A teacher who does not elect in accordance with the provisions of this paragraph to receive a refund of the permanent fund contributions credited to his account shall be entitled only to the benefit provided in the immediately preceding paragraph of this Section. (Amended by Ord. 192-74, App. 4/18/74)

**SEC. 16.89-13. AUTHORITY OF
GENERAL MANAGER.**

The General Manager, San Francisco City and County Employees' Retirement System, is hereby authorized to perform any and all acts, including but not limited to execution of agreements concerning administrative details and certification of records, necessary to implement the provisions of Chapter 239 of the Statutes of 1972 and amendments thereto and of Sections 16.89-1 through 16.89-10 of this Code. (Added by Ord. 15-73, App. 1/5/73)

SEC. 16.89-14. REDEPOSIT.

A person who was a member of the State Teachers' Retirement System on June 30, 1972, and to whom accumulated contributions were previously refunded by the San Francisco City and County Employees' Retirement System may redeposit with said Retirement System in one lump sum (1) an amount equal to the accumulated contributions previously refunded and (2) an amount equal to the interest which would have been credited to his account at the date of his election to redeposit had such contributions not been refunded.

Such person shall have the right to redeposit without re-entry into the San Francisco City and County Employees' Retirement System, provided that, at the time such person terminated City and County service, he was not eligible to make the election provided in Subsection (F) of Section 8.509 of the Charter (formerly Section 165.2 of the Charter of 1932). (Added by Ord. 15-73, App. 1/5/73)

ARTICLE IV-A RESIGNATIONS OF CITY OFFICERS

Sec. 16.89-15. Method of Resignation.

Sec. 16.89-16. Effective Date.

Sec. 16.89-17. Vacancies in Office.

Sec. 16.89-18. Temporary Service.

Mayor may ask said official to return to his office until a successor is appointed. Upon the consent of said official, he shall so serve. Such request and agreement shall be in writing. (Added by Ord. 536-79, App. 11/6/79)

SEC. 16.89-15. METHOD OF RESIGNATION.

Resignations shall be in writing, and made as follows:

(a) By elected officers, to the Clerk of the Board of Supervisors; and

(b) By appointed officers, to the body or officer that appointed them. (Added by Ord. 536-79, App. 11/6/79)

SEC. 16.89-16. EFFECTIVE DATE.

Such resignation shall become effective, unless otherwise stated in the written resignation, at the time at which they are received:

(a) By the office of the Clerk of the Board of Supervisors, when submitted by an elected officer; or

(b) By the office of the appointing authority, when submitted by an appointed officer. (Added by Ord. 536-79, App. 11/6/79)

SEC. 16.89-17. VACANCIES IN OFFICE.

An office becomes vacant when the incumbent thereof dies, resigns, is adjudged insane, convicted of a crime involving moral turpitude, or of an offense involving a violation of his or her official duties, or is removed from office, or ceases to be an elector of the City and County, or neglects to qualify within the time prescribed by law, or within 20 days after his or her election or appointment, or abandons his or her office. (Added by Ord. 536-79, App. 11/6/79; amended by Ord. 438-96, App. 11/8/96)

SEC. 16.89-18. TEMPORARY SERVICE.

Upon the effective resignation of an elected or appointed official, other than the Mayor, the

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ARTICLE V: SALARY AND WAGE DEDUCTIONS

- Sec. 16.90. Controller Authorized to Deduct.
- Sec. 16.91. Procedure for Administering Article.
- Sec. 16.92. Fees for Collection of Deductions; Payment of Balance to Particular Organization.
- Sec. 16.93. Organizations for Which Deductions Can be Made.
- Sec. 16.93-1. Charitable Deductions and the Annual Joint Fundraising Drive.
- Sec. 16.93-2. Selection of Agencies Eligible to Participate in the Annual Joint Fundraising Drive.
- Sec. 16.93-3. Duties of the Mayor, the Controller and the Director of Administrative Services.
- Sec. 16.93-4. Schedule of the Annual Drive.
- Sec. 16.93-5. Obligations of Participating Agencies.

SEC. 16.90. CONTROLLER AUTHORIZED TO DEDUCT.

(a) Based upon individual authorized deductions, revocable at will, the Controller is hereby authorized to deduct and collect moneys from the salaries or wages of officers or employees of the City and County of San Francisco, and the Superior Court for the organizations and purposes in this Article.

(b) The Controller is hereby authorized to deduct and collect a bona fide union or employee organization service fee from the salaries or wages of officers or employees of the City and County of San Francisco, and the Superior Court holding positions in classifications included within an agency shop agreement entered into pursuant to the laws of the State of California. (Amended by Ord. 1-82, App. 1/8/82; Ord. 146-00, File No. 000630, App. 6/30/2000)

SEC. 16.91. PROCEDURE FOR ADMINISTERING ARTICLE.

The Controller shall prescribe the procedure for administering the provisions of this Article. (Ord. No. 10598 (1939), Sec. 3)

SEC. 16.92. FEES FOR COLLECTION OF DEDUCTIONS; PAYMENT OF BALANCE TO PARTICULAR ORGANIZATION.

With respect to the deductions and collections authorized by Section 16.90 of this Code, the Controller shall determine, establish, charge and deposit in the treasury to the credit of the General Fund, fees for making such deductions and collections, which fees shall not be less than the costs of such services; provided, that such fees shall not be collected where waived or disallowed pursuant to an approved memorandum of understanding with a recognized employee organization. After deduction of any such fees chargeable for such services, the Controller shall pay the balance of the amounts deducted and collected to that organization for which they have been collected. (Ord. No. 10598 (1939), Sec. 2; amended by Ord. 146-00, File No. 000630, App. 6/30/2000)

SEC. 16.93. ORGANIZATIONS FOR WHICH DEDUCTIONS CAN BE MADE.

Deductions and collections as provided by this Article shall be made for the organizations and the purposes designated in the following paragraphs:

(a) Bona fide unions or employee organizations, for dues or assessments, and for premiums or membership fees for automobile, life, accident, health or disability insurance provided under a group plan by said bona fide unions or employee organizations; and when authorized by memorandum of understanding, voluntary political committee contributions.

(b) San Francisco Firemen Federal Credit Union, for the payment of money to or the purchase of shares in.

(c) San Francisco Police Department Federal Credit Union, for the payment of money to or the purchase of shares in.

(d) Provident Central Credit Union, for the payment of money to or the purchase of shares in.

(e) Recreation and Park Federal Credit Union, for the payment of money to or the purchase of shares in.

(f) San Francisco Federal Credit Union, for the payment of money to or the purchase of shares in.

(g) San Francisco Federated Teachers' Credit Union, for the payment of money to or the purchase of shares in.

(h) San Francisco Railway Employees' Federal Credit Union for the payment of money to or the purchase of shares in.

(i) San Francisco Municipal Shopmen's Credit Union, for the payment of money to or the purchase of shares in.

(j) Golden One Credit Union, for dues or assessments.

(k) San Francisco Bay Area Educators' Credit Union, for the payment of money to or the purchase of shares in.

(l) San Francisco Civil Service Commission, for fees relating to the imprinting and processing of fingerprints.

(m) Fire Department League Athletic Musical Events, for the payment of money to.

(n) San Francisco Employees' Benevolent Association, for the payment of money to.

(o) City and County of San Francisco, for payment to the San Francisco City Services Preservation Fund to reduce the City's deficit and preserve City Services. (Amended by Ord. 485-82, App. 9/30/82; Ord. 429-88, App. 9/16/88; Ord. 162-92, App. 6/10/92; Ord. 146-00, File No. 000630, App. 6/30/2000; Ord. 165-04, File No. 040762, App. 7/22/2004)

SEC. 16.93-1. CHARITABLE DEDUCTIONS AND THE ANNUAL JOINT FUNDRAISING DRIVE.

Deductions from employee pay warrants for charitable organizations shall only be withheld based upon authorizations made by employees in the Annual Joint Fundraising Drive. Each year the City and County of San Francisco shall hold an Annual Joint Fundraising Drive ("Annual Drive") in which its officers and employees are encouraged to participate. (Added by Ord. 429-88, App. 9/16/88)

SEC. 16.93-2. SELECTION OF AGENCIES ELIGIBLE TO PARTICIPATE IN THE ANNUAL JOINT FUNDRAISING DRIVE.

Participation shall be limited to any Mayor's fund which is created to further social causes, those funds being the Mayor's Youth Fund, the Mayor's Homeless Fund, and the Mayor's Youth Employment Summer Program, and to all federated agencies that meet the following criteria, as determined by the Board of Supervisors:

(a) An eligible charitable agency must be a federated agency representing 10 or more charitable organizations, of which at least 50 percent shall represent organizations located in the counties of San Francisco, San Mateo, Santa Clara, Alameda, Contra Costa, and Marin.

(b) The federated agency or Mayor's fund must certify to the Board of Supervisors that the Federal Internal Revenue Service has determined that contributions to all of the represented charitable organizations or Mayor's funds are tax deductible.

(c) The federated agency must have been in existence with 10 or more qualified charities for at least one year prior to the date of application and provide satisfactory evidence to that effect at the time of filing an application with the Board. Mayor's funds shall submit their most recent financial statement to the Board of Supervisors on an annual basis.

(d) The federated agency must submit its most recent certified audit at the time of filing an application with the Board.

(e) Agencies that wish to participate in the Annual Drive are required to submit applications to the Board of Supervisors that include all information that may be relevant to the criteria listed in this Section. (Added by Ord. 429-88, App. 9/16/88; amended by Ord. 244-97, App. 6/13/97)

SEC. 16.93-3. DUTIES OF THE MAYOR, THE CONTROLLER AND THE DIRECTOR OF ADMINISTRATIVE SERVICES.

(a) The Mayor shall designate the City's Annual Drive Chair. The Chair will be responsible for providing staff support for the Annual Drive that occurs during the Chair's tenure.

(b) The Controller of the City and County of San Francisco shall provide the technical support necessary for the collection and donor designation process.

(c) The Director of Administrative Services of the City and County of San Francisco shall review all applications to participate in the Annual Drives of the City and recommend to the Board of Supervisors whether applicants qualify to participate in the Annual Drive. (Added by Ord. 429-88, App. 9/16/88; amended by Ord. 195-89, App. 6/5/89; Ord. 287-96, App. 7/12/96)

SEC. 16.93-4. SCHEDULE OF THE ANNUAL DRIVE.

(a) By March 1st of each year agencies that wish to participate in the upcoming Annual Drive shall submit their applications to participate with the Board of Supervisors. Provided that only for the 2002 Annual Drive, any Mayor's fund that wishes to participate in the 2002 Annual Drive shall submit their request to participate with the Board of Supervisors by April 15, 2002. By March 1st the Mayor shall also designate the Chair for the upcoming Annual Drive.

(b) By March 1st of each year the Chair of the preceding Annual Drive shall report to the Mayor and the Board of Supervisors on the success of the concluded Annual Drive including the level of employee designations to each federated agency.

(c) By May 1st of each year, the Board of Supervisors, by resolution, shall designate those agencies that qualify to participate in the City's Annual Drive for that year. Provided that only for the 2002 Annual Drive, the Board of Supervisors, by resolution, shall designate June 1, 2002, those agencies that qualify to participate in the City's Annual Drive for that year. (Added by Ord. 429-88, App. 9/16/88; amended by Ord. 129-89, App. 4/26/89; Ord. 134-92, App. 5/21/92; Ord. 151-95, App. 5/5/95; Ord. 244-97, App. 6/13/97; Ord. 76-00, File No. 000479, App. 4/28/2000; Ord. 146-00, File No. 000630, App. 6/30/2000; Ord. 70-02, File No. 020551, App. 5/10/2002)

SEC. 16.93-5. OBLIGATIONS OF PARTICIPATING AGENCIES.

All participating agencies shall have the following obligations and responsibilities:

(a) All participating agencies will jointly prepare and print all Annual Drive materials, including directories and payroll deduction forms and other related documents, with a Bay Area printer that pays prevailing wages, and will provide adequate numbers of such materials as determined by the agencies. The Chair of the Annual Drive and the Controller will work with the participating agencies in the design of these materials, the design to be approved no later than August 1st. The Chair of the Annual Drive shall schedule the distribution of materials and associated promotional activities such that all employee payroll deduction authorizations are provided to the Controller no later than December 1st.

(b) All participating agencies and the City and County shall jointly execute a Memorandum of Agreement concerning the payment of actual costs of the Annual Drive materials, and including any additional terms and conditions the Mayor or his or her designee determines, after consultation with the City Attorney, are in the best interest of the City. The memorandum shall also designate which of the participating agencies shall serve as the coordinating agency.

(c) All warrants issued for Annual Drive payroll deductions shall be issued by the City and County to each participating agency based

upon the percentage of cash, checks and pledges designated for each participating agency at the conclusion of the solicitation period of the Annual Drive. The distribution percentage shall be provided to the Controller by the coordinating agency. Distribution of funds to the participating agencies by the Controller of the City and County shall occur within five working days after each regular employee payday.

(d) Employee payroll deductions to a given federated agency shall not be made for less than \$1.00 per pay period, and the authorization for any deduction shall be for 12 months. The sum of an employee's authorizations shall be withheld as a single Annual Drive deduction in the Controller's payroll system.

(e) Payroll deduction privileges shall be reviewed annually to determine if all agencies accorded deduction privileges continue to meet the above criteria.

(f) The City and County of San Francisco, after each pay period, shall charge a processing fee of six cents per employee who had an Annual Drive deduction in the payroll period to reimburse the City and County for the expenses incurred in processing payroll deductions as a part of the Annual Drive. The processing fee will be netted out of the warrant issued to the participating agencies following each payroll period. The Controller may change the processing fee each fiscal year in conformance with Section 16.92 of this Code. (Added by Ord. 429-88, App. 9/16/88; amended by Ord. 146-00, File No. 000630, App. 6/30/2000; Ord. 70-05, File No. 050348, App. 4/15/2005)

ARTICLE VI: [RESERVED]

San Francisco - Administrative Code

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ARTICLE VII: [RESERVED]

San Francisco - Administrative Code

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ARTICLE VIII: [RESERVED]

San Francisco - Administrative Code

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ARTICLE VIII-A: ACCIDENT PREVENTION

- Sec. 16.121-1. Purpose of Article.
- Sec. 16.121-2. Workers' Compensation Council; Members; Procedure.
- Sec. 16.121-3. Workers' Compensation Council; Powers and Duties.
- Sec. 16.121-4. Human Resources Director; Powers and Duties.
- Sec. 16.121-5. Powers of City and County Officers Not Divested.

SEC. 16.121-1. PURPOSE OF ARTICLE.

The Board of Supervisors of the City and County of San Francisco hereby declares that this Article is adopted to achieve top management oversight of workers' compensation and an integrated accident prevention program for employees of the City and County of San Francisco. To the extent that funds made available permit, the program shall include, without being limited to, the following objectives:

(a) Training of supervisory personnel and employees generally in safety practices and procedures and workers' compensation best practices and procedures through oral and visual education at meetings, by personal contact, and through the issuance of posters, bulletins and other material through print and electronic means;

(b) Gathering and analysis of data relating to accident experience; and

(c) Providing safety guidance to department heads and other responsible officials. (Added by Ord. 23-61, App. 2/1/61; amended by Ord. 250-00, File No. 001489, App. 10/27/2000)

SEC. 16.121-2. WORKERS' COMPENSATION COUNCIL; MEMBERS; PROCEDURE.

A Workers' Compensation Council is hereby established consisting of the Human Resources Director, who shall be chair, the City Administrator, the Controller, the City Attorney, the Executive Director of the Retirement System,

and the Mayor's Director of Budget and Finance. It shall be the duty of each of these designated officers to serve on the Workers' Compensation Council, except that any member of the Council may deputize in writing filed with the Council any member of his or her office or department to serve in his or her place on the Council for such period or in such meeting as he or she may desire. Neither the members of the Council nor the members of their offices or departments deputized to serve in their places at any time shall receive any additional compensation for their services on the Committee. (Added by Ord. 23-61, App. 2/1/61; amended by Ord. 287-96, App. 7/12/96; Ord. 290-98, App. 9/25/98; Ord. 250-00, File No. 001489, App. 10/27/2000)

SEC. 16.121-3. WORKERS' COMPENSATION COUNCIL; POWERS AND DUTIES.

The Workers' Compensation Council shall have power, and it shall be its duty to:

(a) Act in an advisory capacity in all matters pertaining to workers' compensation and safety as required for the guidance of management, department heads, officers and employees of the City and County of San Francisco;

(b) Assist the Human Resources Director in the establishment and maintenance of a record system that will continuously collect and compile all pertinent statistical data relating to all work-related injuries and illnesses involving employees of the City and County of San Francisco;

(c) Submit an annual report to the Board of Supervisors generally setting forth the work performed and the progress made toward achievement of the purpose of the Workers' Compensation Council. (Added by Ord. 23-61, App. 2/1/61; amended by Ord. 250-00, File No. 001489, App. 10/27/2000)

**SEC. 16.121-4. HUMAN RESOURCES
DIRECTOR; POWERS AND DUTIES.**

The Human Resources Director shall act as coordinator of the Workers' Compensation Council. (Added by Ord. 23-61, App. 2/1/61; amended by Ord. 287-96, App. 7/12/96; Ord. 290-98, App. 9/25/98; Ord. 250-00, File No. 001489, App. 10/27/2000)

**SEC. 16.121-5. POWERS OF CITY AND
COUNTY OFFICERS NOT DIVESTED.**

No provision of this Article shall be deemed or construed to grant any authority to, or impose any duty upon, the Workers' Compensation Council or the Human Resources Director which is vested or imposed by general law or the Charter of the City and County of San Francisco in or on any other officer, board, commission, department, or employee of the City and County. (Added by Ord. 23-61, App. 2/1/61; amended by Ord. 287-96, App. 7/12/96; Ord. 290-98, App. 9/25/98; Ord. 250-00, File No. 001489, App. 10/27/2000)

ARTICLE IX: BONDING OF CITY OFFICERS AND EMPLOYEES

- Sec. 16.122. Bonds; Designated Officers; All Others.
- Sec. 16.123. Authorized Sureties or Insurers; Terms and Conditions of the Bond.
- Sec. 16.124. Approvals; Filing and Custody; Public Inspection.
- Sec. 16.125. Cancellation.
- Sec. 16.126. Applicability of State Law; Availability of Coverage.
- Sec. 16.127. Annual Review.

SEC. 16.122. BONDS; DESIGNATED OFFICERS; ALL OTHERS.

(a) The Treasurer, Controller and Tax Collector shall be bonded by a faithful performance fidelity bond, individually or on a blanket basis, provided such coverage is commercially available at a reasonable cost, in the amount of \$5,000,000, with commercially reasonable deductibles permitted.

(b) All other officers and employs of the City and County shall be bonded by a blanket dishonesty bond, provided such coverage is commercially available at a reasonable cost, in the amount of \$5,000,000, with commercially reasonable deductibles permitted.

(c) The bonds shall be payable to the City and County.

(d) The bonds shall inure to the benefit of any officer liable for the acts and omissions of officers and employees covered by the bonds and also to the benefit of the City and County.

(e) The City and County and each such officer may singly or jointly bring suit on the bonds. (Added by Ord. 69-00, File No. 000356, App. 4/28/2000)

SEC. 16.123. AUTHORIZED SURETIES OR INSURERS; TERMS AND CONDITIONS OF THE BOND.

(a) The surety or insurer of the bond shall be a duly organized corporate surety insurance company authorized to do surety business in the State in the manner provided by law.

(b) The condition of the bonds shall be that each of the officers referred to in Section 16.122(a) of this Code shall faithfully and truly perform each and all duties required of that officer by law at the time the bonds are executed, and also all such additional duties as may be imposed upon or required by any existing law or laws enacted subsequently to the execution of the bond. The bonds shall be in force and obligatory upon the surety or insurer for any and all breaches of the conditions thereof.

(c) The premium charged for the bonds shall be paid by the City and County. The money required to pay the premium on the bonds shall be provided in accordance with the budget and fiscal provisions of the Charter of the City and County. (Added by Ord. 69-00, File No. 000356, App. 4/28/2000)

SEC. 16.124. APPROVALS; FILING AND CUSTODY; PUBLIC INSPECTION.

(a) The bonds shall be approved as to form by the City Attorney and as to the sufficiency and solvency of the surety or insurer thereon by the Controller.

(b) The bonds required under Section 16.122 shall be recorded in the office of the County Recorder, who shall charge no recording fee, and shall be filed with the Controller, who shall be the custodian thereof.

(c) The bonds, and all endorsements and riders thereto, shall be available during normal business hours for public inspection. (Added by Ord. 69-00, File No. 000356, App. 4/28/2000)

SEC. 16.125. CANCELLATION.

The bonds may be canceled in their entirety or as to any officer covered thereby: (1) by written notice given to the surety or insurer by the Controller of the City and County, or (2) by not less than 30 days' written notice given by the surety or insurer to the Controller of the City and County. Such cancellation notices shall be sent by registered mail. (Added by Ord. 69-00, File No. 000356, App. 4/28/2000)

SEC. 16.126. APPLICABILITY OF STATE LAW; AVAILABILITY OF COVERAGE.

(a) As to all subject matters relating to official bonds, other than those specifically covered in this Article and the Charter, the provisions of the law of the State shall be complied with and be applicable to the bond given pursuant to the provisions of this Article.

(b) The Risk Manager shall obtain such bonds on behalf of the City and County. In the event bond coverage becomes commercially unavailable in the forms prescribed, the Risk Manager shall arrange coverage substantially equal to that prescribed herein or shall advise the Board of Supervisors of its unavailability. (Added by Ord. 69-00, File No. 000356, App. 4/28/2000)

SEC. 16.127. ANNUAL REVIEW.

By March 31st of every year, the City's Office of Risk Management, in consultation with the Controller and the City Attorney, shall report to the Board of Supervisors whether any changes to these bonding requirements are necessary or appropriate. (Added by Ord. 69-00, File No. 000356, App. 4/28/2000)

Sec. 16.157.

(Renumbered as Sec. 16.703 by Ord. 289-00, File No. 001549, App. 12/22/2000)

ARTICLE X: [RESERVED]

San Francisco - Administrative Code

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ARTICLE XI: DISABILITY BENEFITS

- Sec. 16.170. Entitlement Defined.
- Sec. 16.171. Disability Benefits for Ambulance Drivers and Medical Stewards.
- Sec. 16.175. Disability Benefits for District Attorney Investigators.

SEC. 16.170. ENTITLEMENT DEFINED.

Whenever any officer or employee of the City and County of San Francisco, other than an officer or employee to whom the disability benefit provisions of Section 8.515 of the Charter are applicable, is incapacitated for the performance of his or her duty by reason of bodily injury or illness received in the performance of his or her duty and caused by an act of criminal violence he or she shall become entitled, regardless of his or her period of service with the City and County, to disability benefits equal to and in lieu of his or her salary, while so disabled, for a period or periods not exceeding 12 months in the aggregate with respect to any one such injury or illness. The entitlement of such officer or employee to the disability benefits provided in this Section shall be determined by the Civil Service Commission.

Said disability benefits shall be reduced in the manner provided in Section 16.84 of this Code by the amount of any benefits, other than medical benefits, payable to such officer or employee under the Labor Code of the State of California concurrently with said disability benefits and because of the injury or illness resulting in said disability. Such disability benefits as are paid under this Section shall be considered as in lieu of any benefits, other than medical benefits, payable to such officer or employee under said Labor Code and shall be in satisfaction and discharge of the obligation of the City and County to pay such benefits.

Such disability benefits as are paid under this Section shall be considered as in lieu of any benefits payable to such employee by the City

and County under any sick leave rule or other wage-continuation program provided by the City and County and shall be in satisfaction and discharge of the obligation of the City and County to pay such benefits. (Added by Ord. 31-72, App. 2/16/72)

SEC. 16.171. DISABILITY BENEFITS FOR AMBULANCE DRIVERS AND MEDICAL STEWARDS.

Whenever a person employed by the City and County of San Francisco in the position of ambulance driver, medical steward or senior medical steward is incapacitated for the performance of his duty by reason of bodily injury received in the performance of his duty, he shall become entitled, regardless of his period of service with the City and County, to disability benefits equal to and in lieu of his salary while so disabled, for a period or periods not exceeding 12 months in the aggregate with respect to any one such injury; provided, however, that such person shall not be entitled to such disability benefits for the first 10 working days with respect to any such injury. The entitlement of such employee to the disability benefits provided in this Section shall be determined by the Retirement Board.

Said disability benefits shall be reduced in the manner provided in Section 16.84 of this Code by the amount of any benefits, other than medical benefits, payable to such employee under the Labor Code of the State of California concurrently with said disability benefits and because of the injury resulting in said disability. Such disability benefits as are paid under this Section shall be considered as in lieu of any benefits, other than medical benefits, payable to such employee under said Labor Code and shall be in satisfaction and discharge of the obligation of the City and County to pay such benefits.

Such disability benefits as are paid under this Section shall be considered as in lieu of any benefits payable to such employee by the City

and County under any sick leave rule or other wage-continuation program provided by the City and County and shall be in satisfaction and discharge of the obligation of the City and County to pay such benefits. (Added by Ord. 494-73, App. 12/20/73)

benefits payable to such employee by the City and County under any sick leave rule or other wage-continuation program provided by the City and County and shall be in satisfaction and discharge of the obligation of the City and County to pay such benefits. (Added by Ord. 334-82, App. 7/2/82)

**SEC. 16.175. DISABILITY BENEFITS
FOR DISTRICT ATTORNEY
INVESTIGATORS.**

Whenever any district attorney investigator is incapacitated for the performance of his or her duty by reason of bodily injury received in the performance of his or her duty, he or she shall become entitled, regardless of his or her period of service with the City and County, to disability benefits equal and in lieu of his or her salary while so disabled, for a period or periods not exceeding 12 months in the aggregate with respect to any one such injury; provided however, that such person shall not be entitled to such disability benefits for the first seven working days with respect to any such injury. The entitlement of such employee to the disability benefits provided in this Section shall be determined by the Retirement Board.

The term "district attorney investigator" as used herein shall be limited to those employees of the district attorney's office who are duly appointed to civil service classification numbers 8144, 8146, 8147, 8148, 8149 and 8150.

Said disability benefits shall be reduced in the manner provided in Section 16.84 of this Code by the amount of any benefits, other than medical treatment, payable to such employee under the Labor Code of the State of California concurrently with said disability benefits and because of the injury resulting in said disability. Such disability benefits as are paid under this Section shall be considered as in lieu of any benefits, other than medical treatment, payable at any time to such employee under said Labor Code and shall be in satisfaction and discharge of the obligation of the City and County to pay such benefits.

Such disability benefits as are paid under this Section shall be considered as in lieu of any

ARTICLE XI-A: EMPLOYEE RELATIONS

- Sec. 16.200. Title of Ordinance.
- Sec. 16.201. Statement of Purpose.
- Sec. 16.202. Definitions.
- Sec. 16.203. Employee Relations Division.
- Sec. 16.204. Powers and Duties of the Civil Service Commission.
- Sec. 16.205. Utilization of Administrative Law Judges.
- Sec. 16.206. Management Rights.
- Sec. 16.207. Employee Rights.
- Sec. 16.208. Designation of Management, Supervisory and Confidential Employees.
- Sec. 16.209. Procedure for Registration of Employee Organizations.
- Sec. 16.210. Establishment of Representation Units.
- Sec. 16.211. Procedure for Recognition of Employee Organization.
- Sec. 16.212. Decertification.
- Sec. 16.213. Unfair Labor Practices.
- Sec. 16.214. Sanctions for Unfair Labor Practices.
- Sec. 16.215. Meeting and Conferring in Good Faith.
- Sec. 16.216. Impasse Procedures.
- Sec. 16.217. Disputes Concerning Memorandums of Understanding.
- Sec. 16.218. Grievances.
- Sec. 16.219. Employees Meeting on City and County Time.
- Sec. 16.220. Dues Deduction.
- Sec. 16.222. Separability.

SEC. 16.200. TITLE OF ORDINANCE.

This ordinance shall be known as the Employee Relations Ordinance of the City and County of San Francisco. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.201. STATEMENT OF PURPOSE.

The purpose of this ordinance is to promote full communication between the City and County of San Francisco and its employees by providing a reasonable method of resolving disputes between the City and County and its employees and their employee organizations. It is also the purpose of this ordinance to promote the improvement of personnel management and employer-employee relations within City and County government by providing a uniform basis for recognizing the right of City and County employees to join employee organizations of their own choice, and to be represented by such organizations in their employment relationship with the City and County.

Nothing contained herein shall be deemed to supersede the provisions of the City and County Charter or ordinances and civil service rules establishing and regulating the civil service system; provided, however, that amendments to existing ordinances and civil service rules may be proposed through utilization of the meeting and conferring process.

Nothing contained herein shall be deemed to affect employees who collectively bargain under federal statutes such as the Railway Labor Act or employees whose salary is established pursuant to Section 8.405 of the Charter of the City and County of San Francisco. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202. DEFINITIONS.

Unless the context requires otherwise, the words and phrases set forth in Sections 16.202.1 through 16.202.17, inclusive, shall have the meanings respectively ascribed to them in said sections. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.1.

"Confidential employee" means an employee who is privy to recommendations or decisions of

City and County management affecting employee relations. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.2.

"Consult" means to communicate verbally or in writing between management and registered employee organizations or individual employees, for the purpose of presenting and obtaining views or advising of intended actions. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.3.

"Days" means calendar days. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.4.

"Determining official or body" means the official or body which has final authority to make a decision on the issue under discussion. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.5.

"Employee organization" means any organization or joint council of organizations which includes employees of the City and County, and which has as one of its purposes representing such employees in their relations with the City and County. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.6.

"Employee representation" unit means a unit established pursuant to Section 16.210 of this ordinance. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.7.

"Impasse" means failure after a reasonable effort and reasonable period of time to reach agreement in the discussions between the designated representatives of the City and County and representatives of recognized employee organizations over matters on which they meet and confer. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.8.

"Management employee" means any employee, as designated by the Human Resources Director or designee, who is in a high administrative and policy-influencing position with responsibility for managing a major function or

rendering management advice to top-level administrative authority. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.202.9.

"Mediation" means effort by an impartial third party to assist in reconciling a dispute between an appointing power and a recognized employee organization over a matter subject to meeting and conferring through interpretation, suggestion and advice. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.10.

"Meet and confer in good faith" means that representatives designated by the City and County and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.11.

"Memorandum of Understanding" means a written statement incorporating all matters within the scope of representation agreed on through meeting and conferring between designated representatives of the City and County and representatives of one or more recognized employee organizations. The agreement stated in the memorandum becomes effective only if ratified by the determining body or official of the City and County. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.12.

"Commission" means the Civil Service Commission of the City and County of San Francisco as established pursuant to Section 3.660 of the San Francisco Charter. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.202.13.

"Professional employees," for the purpose of this ordinance, means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of

physical, chemical, and biological scientists. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.14.

"Recognized employee organization" means an employee organization which, by election, has been chosen by the majority of employees voting in a particular representation unit to represent them, and certified by the Civil Service Commission in the manner provided in Section 16.211 of this ordinance. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.15.

"Registered employee organization" means an employee organization which has been registered with the Human Resources Director or designee, as provided in Section 16.209 of this ordinance. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.202.16.

"Scope of representation" means matters relating to employment conditions and employee relations, including wages, hours and other terms and conditions of employment. The scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.202.17.

"Supervisory employee" means any employee, as designated by the Human Resources Director or designee, who has authority to hire, assign, evaluate or discipline other employees, or to adjust their grievances, or effectively to recommend any such action. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.203. EMPLOYEE RELATIONS DIVISION.

(a) There is hereby created an Employee Relations Division which shall be placed under the control and jurisdiction of the Board of Supervisors. Said division shall be headed by a Human Resources Director or designee who shall serve as the representative of the City and County of San Francisco in the implementation of those provisions of Chapter 10 of Government Code applicable to the City and County of San

Francisco and which are not specifically delegated by Charter provision and/or ordinance to a particular officer, board or commission of the City and County.

(b) The Human Resources Director or designee shall coordinate the meeting and conferring process. City and County departments and staff agencies may be called upon by the Employee Relations Division to participate and to give expert assistance. Any department about to enter into discussion with an employee organization on matters of intra-departmental concern shall notify the Human Resources Director or designee so that he can participate, and so that the Employee Relations Division can serve as a clearing house for all such discussion. All departments shall cooperate with and furnish data to the Human Resources Director or designee.

(c) Nothing contained herein shall be deemed to prevent the Board of Supervisors from contracting for the performance of functions carried out by, and/or required of the Employee Relations Division, pursuant to Charter Sections 8.300 and 8.300-1. (Amended by Ord. 383-80, App. 8/22/80; Ord. 109-94, App. 3/11/94)

SEC. 16.204. POWERS AND DUTIES OF THE CIVIL SERVICE COMMISSION.

(a) In addition to such other powers and duties as it has under the Charter and this ordinance and as may be conferred upon it from time to time by law, the Civil Service Commission shall have the power and duty:

(1) To certify as the recognized employee organization of a representation unit that employee organization which has a majority of the employees in such representation unit as determined by a secret ballot election;

(2) To conduct elections to ascertain which employee organization represents a majority of the employees in a particular representation unit, or to arrange for the election to be conducted by a mutually agreed upon third party;

(3) To decertify as the recognized representative an employee organization which has been found by election no longer to be the majority representative in a particular representation unit;

(4) To adopt rules and regulations for the conduct of its business and the carrying out of its powers and duties;

(5) To investigate charges of unfair employee relations practices or violations as defined in this ordinance and, if it deems appropriate, arrange for a hearing on said practices or charges by an administrative law judge, and

(6) To administratively process all matters which require or permit a hearing before an administrative law judge and to the extent necessary make all arrangements for said hearings. The Commission, after review of the facts in any particular dispute, may attempt to obtain the agreement of the parties involved on the disputed issue(s) before the matter is submitted to an administrative law judge. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.205. UTILIZATION OF ADMINISTRATIVE LAW JUDGES.

The City and County is hereby authorized to enter into an agreement or contract with the Office of Administrative Hearings, California State Personnel Board, for the purpose of obtaining the services of an administrative law judge. Such agreement or contract shall provide that said administrative law judge shall be responsible for the duties as hereinafter set forth in this Article.

The costs involved in obtaining the services of an administrative law judge as necessitated by this Article shall be borne by the City and County of San Francisco, provided, however, that all expenses incurred by the City and County in utilizing the administrative law judge in processing unfair employee relations complaints shall be divided equally among the parties involved.

The authority of the administrative law judge shall be to the extent as set forth in this Article and in no event shall any decision of the administrative law judge conflict with, alter or attempt to alter the provisions of the Charter or rules and regulations of the Civil Service Commission.

Any costs incurred in transcribing and reporting the proceedings shall be borne by the party requesting such transcribing or reporting, unless

a contrary agreement is reached by mutual consent. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.206. MANAGEMENT RIGHTS.

The City and County of San Francisco retains all rights as set forth in the provisions in the Charter of the City and County of San Francisco, existing ordinances and civil service rules establishing and regulating the Civil Service System; provided, however, that amendments to said existing ordinances and civil service rules may be proposed through the meeting and conferring process. The exercise of City and County rights does not preclude employees or registered employee organizations from consulting or raising grievances on decisions which affect wages, hours and other terms and conditions of employment. The City and County reserves the right to take whatever action may be necessary in an emergency situation; however, a recognized employee organization affected by the action shall be promptly notified. Any questions regarding the interpretation of this Section or Section 16.207 which cannot be resolved between employee and management representatives shall, upon request by either party involved, be referred by the Human Resources Director or designee to an administrative law judge for hearing and final determination. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.207. EMPLOYEE RIGHTS.

Employees of the City and County shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations. Employees of the City and County shall also have the right to refuse to join or participate in the activities of employee organizations. Employees shall also have the right to represent themselves individually in their employment relations with the City and County. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of his or her exercise of those rights. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.208. DESIGNATION OF MANAGEMENT, SUPERVISORY AND CONFIDENTIAL EMPLOYEES.

(a) The Human Resources Director or designee, in consultation with department heads, shall specify the employees who are to be designated as management, supervisory or confidential for the purpose of this ordinance. Each such person shall be notified by his or her department head of his or her management, supervisory or confidential status. A list of the employees so designated shall be maintained in the office of the Human Resources Director.

(b) If an employee designated as management, supervisory or confidential, or an employee organization, or a department head, disagrees with such designation, the question shall be referred to an administrative law judge for hearing and final determination.

(c) Management, supervisory and confidential employees may not represent an employee organization which represents other than management, supervisory or confidential employees on matters within the scope of representation. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.209. PROCEDURE FOR REGISTRATION OF EMPLOYEE ORGANIZATIONS.

(a) An organization or joint council of organizations which wishes to be registered as an employee organization shall submit to the Human Resources Director or designee a request signed by a duly authorized officer of the organization containing the following information:

(1) Name and address of the employee organization.

(2) Names and titles of its officers, as well as designation of the officials authorized to act as representatives of the organization in employer-employee relations with the City and County.

(3) A statement of whether or not the organization is a chapter or local of, or affiliated with, a regional or state, or national or international

organization, and, if so, the name and address of each such regional, state, national or international organization.

(4) A copy of its constitution or by-laws, and a statement signed by an officer of the employee organization to the effect that the organization has as one of its purposes representing employees of the City and County in employment relations.

(5) Verification of employee membership in the employee organization which may be shown by employee organization payroll dues deductions or authorization cards.

(6) A designation of those persons residing in California, not exceeding three in number, to whom notice sent by United States mail would be deemed sufficient by the organization for any purpose.

(7) A statement that the organization recognizes and is aware of Government Code Section 3509. (Section 923 of Labor Code is not applicable to public employees.)

(8) A statement that the organization agrees to abide by all of the provisions of this ordinance, except that this shall not preclude the right of the organization to challenge by court action any provision it deems to be invalid.

(b) Upon receipt of the petition, the Human Resources Director or designee shall verify that the petition complies with the requirements of this Section and, within 14 days, notify the employee organization that it is registered.

(c) The City and County is under no obligation to consult with employee organizations which do not satisfactorily comply with the requirements of Paragraph (a) of this Section. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.210. ESTABLISHMENT OF REPRESENTATION UNITS.

(a) All employees throughout the City and County of San Francisco within any of the following categories shall constitute an appropriate representation unit:

Unit 1. In determining any appropriate representation unit, separate representation shall

be granted to any building trade or other craft or group which has historically established separate bargaining units in private industry or the journeymen of which normally attain status through the completion of a substantial period of apprenticeship. In establishing any such craft or group unit, there shall be included all apprentices, journeymen, foremen and general foremen that are customarily included in such craft or group units in negotiated contracts in private industry and shall also include within the separate craft or group unit those positions that have historically been represented by the craft or group organization in the handling of grievances and determination of wages and working conditions with the City and County of San Francisco.

Employees whose rates of pay are established by the City and County by reference to a craft or group rate in private industry on a percentage of the craft rate or other basis shall also be included within such craft group or unit. Classifications or positions which combine the work of more than one craft shall be placed in the craft unit representing the highest skill required to be performed by the position. In the event this is not possible to ascertain, any individual or individuals occupying any such position or classification shall have the right to a self-determination election to determine appropriate placement of the position or classification. Employee organizations representing City and County employees whose compensation is fixed pursuant to Section 8.403 of the Charter, or whose members are in the Code 7300 Journeyman Trade Group (including apprentices, foremen and general foremen) shall be designated the recognized employee organization for such representation unit by the Commission upon complying with the provisions of Section 16.209; provided, however, that after the initial recognition granted herein such recognition shall be subject to the terms and conditions of Section 16.212 of this ordinance.

Unit 2. Nonsupervisory employees in blue collar positions not included in Unit 1 above.

Unit 3. Supervisory employees in blue collar positions related to Units 1 and 2, not included in Unit 1.

Unit 4. Nonsupervisory employees in white collar positions.

Unit 5. Supervisory employees in white collar positions.

Unit 6. Nonprofessional hospital and institutional employees.

Unit 7. Municipal Railway employees excepting clerical classifications, transit car cleaners, engineers, technical engineering employees and related supervisory employees to excepted classes.

Unit 8. Professional employees; provided, however, that each profession, including medical interns and residents shall have the right to separate representation for that particular professional category.

Unit 9. Security and detention personnel, excluding sworn permanent and promotive personnel of the Sheriff's Department.

Unit 10. Technical engineering employees to include employees working in technical supportive capacities to engineers and architectural staff.

Unit 11. Supervisory employees in positions related to Units 6, 7, 8, 9, 10.

Unit 12. All sworn permanent and promotive personnel, including supervisory personnel, in the Sheriff's Department except the Sheriff and the Undersheriff.

Unit 13. "Paraprofessional" employees in the San Francisco Unified School District and the San Francisco Community College District as classified by the Human Resources Department.

Unit 14. Nonsupervisory peace officers except sworn permanent and promotive personnel of the Sheriff's Department and Police Department; provided, however, that the Employee Relations Division shall group peace officers in subunits based upon their duties and responsibilities and each subunit shall have the right to separate representation.

Unit 15. Supervisory peace officers in positions related to Unit 14, except the Chief, Bureau of Airport Security, provided, however, that the Employee Relations Division shall group peace officers in subunits based upon their duties and responsibilities and each subunit shall have the right to separate representation.

(b) In the event an employee or employee organization disagrees with his or her or its inclusion in a particular unit above, the aggrieved party may submit a protest to an administrative law judge for a hearing and final determination. In arriving at said determination, said judge shall consider, in addition to any other factors, the similarity of skills, wages, hours and other working conditions among the employees involved, the history of collective bargaining with regard to the employees involved and the desires of said employees. (Amended by Ord. 295-83, App. 5/27/83; Ord. 109-94, App. 3/11/94)

SEC. 16.211. PROCEDURE FOR RECOGNITION OF EMPLOYEE ORGANIZATION.

(a) Any registered employee organization determined by Section 16.209 of this ordinance may request recognition by filing with the Commission a written statement indicating verification of employee approval in the form of dues deduction or authorization cards, of 30 percent of the employees in the particular representation unit.

(b) The Commission shall give written notice to the other registered employee organizations having members in the representation unit for which recognition is sought. Within 30 calendar days from the date of such notice the employee organizations with membership in the particular representation unit may file a challenging petition seeking to become the recognized organization in said unit. The challenging statement shall contain verification in the form of dues deduction or authorization cards of employee approval of 30 percent of the employees in the representation unit. Upon submission of such verification the challenging employee organization shall be placed on the ballot.

(c) Irrespective of whether or not a challenging petition has been filed, the Commission shall, within 30 days, or as soon thereafter as is practicable, after the period allowed for filing challenging petitions expires, cause to be conducted a secret ballot election within the representation unit to determine which organization, if any, shall be recognized.

(d) The ballot in any such election shall contain the choice of "no organization." Where there are three or more choices and no one receives a majority of the valid ballots cast, a run-off election shall be conducted between the two choices receiving the largest number of ballots cast.

(e) Employees entitled to vote in a representation election shall be those employees within the representation unit with permanent or permanent limited tenure status whose names appear on the last payroll bearing a date which is no less than 30 calendar days prior to the date on which the election is to be held or such other date within the discretion of the Commission as may be practicable under the circumstances.

(f) There shall be no more than one valid representation election in a 12 month period within the same representation unit. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.212. DECERTIFICATION.

A decertification petition may be filed with the Commission by employees or by an employee organization to determine whether or not a recognized employee organization continues to represent a majority of the employees in the representation unit. Such petition must be accompanied by proof of employee approval in the form of dues deductions or authorization cards equal to at least 30 percent of the employees within the representation unit, and must be filed within the period between the 90th and 60th day immediately preceding the expiration date of the recognized employee organization's existing memorandum agreement; provided, however, that the existing memorandum agreement does not exceed a two year period. In the event the existing memorandum agreement does exceed a two year period, the decertification petition must be filed within the period between the 90th and 60th day immediately preceding the expiration of the second year of the memorandum agreement. When such a petition has been filed, the Commission shall cause to be conducted a secret ballot election to determine whether the incumbent recognized employee organization shall be decertified and whether another organization shall be rec-

ognized. If the challenging employee organization receives a majority of the valid votes cast, the presently recognized employee organization will be decertified and the employee organization receiving a majority of the valid votes cast will become the recognized employee organization. There shall be no more than one valid decertification election in a 12 month period within the same representation unit. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.213. UNFAIR LABOR PRACTICES.

(a) It shall be an unfair labor practice for the City and County to:

(1) Interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this ordinance;

(2) Dominate or interfere with the formation of any employee organization or contribute financial support to it; provided that the City and County may permit the use of its facilities, make dues deductions, and permit employees who are officers or representatives of employee organizations to confer with City and County representatives during work hours without loss of time or pay, subject to applicable regulations;

(3) Refuse to meet and confer in good faith at reasonable times, places and frequencies with representatives of recognized employee organizations or to refuse to consult upon request with registered employee organizations on matters which are properly within the scope of representation; and

(4) Refuse or fail to cooperate in the impasse procedure involved under the provisions of this ordinance.

(b) It shall be an unfair labor practice for any officer of the City and County or any aide or administrative assistant of any officer of the City and County to meet and confer, or to attempt to meet and confer with an employee, an employee organization, or an employee representative, or any agent thereof, other than at a scheduled public meeting of the Board of Supervisors or a committee meeting of the Board of Supervisors, on matters which the Human Resources Director

or designee has been duly authorized to meet and confer on by an appropriate officer, board or commission of the City and County.

(c) It shall be an unfair labor practice for an employee, an employee organization, an employee representative, or any agent thereof to:

(1) Interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this ordinance;

(2) Refuse to meet and confer in good faith at reasonable times, places and frequencies when the employee organization involved is a recognized representative;

(3) Refuse or fail to cooperate in the impasse procedure involved under the provisions of this ordinance; and

(4) Engage in a strike, slowdown or work stoppage of any kind against the City and County of San Francisco in violation of Section 16.221 of this ordinance.

(d) It shall be an unfair labor practice for any employee, an employee organization, an employee representative, or any agent thereof, to meet and confer or attempt to meet and confer with any officer, aide or administrative assistant to an officer of the City and County other than at a scheduled public meeting of the Board of Supervisors or a committee meeting of the Board of Supervisors, on matters which the Human Resources Director or designee has been duly authorized to meet and confer on by an appropriate officer, board or commission of the City and County.

The provisions of this subsection shall not apply to an employee, an employee organization, an employee representative, or any agent thereof, who desires to communicate with the Board of Supervisors during the meeting and conferring process and does so in writing and addresses said communication to the Clerk of the Board of Supervisors with the request that all members of the Board of Supervisors be provided with copies of the communication. (Amended by Ord. 415-76, App. 10/15/76; Ord. 109-94, App. 3/11/94)

SEC. 16.214. SANCTIONS FOR UNFAIR LABOR PRACTICES.

Charges of committing any unfair labor practices may be initiated by a management representative, by a representative of an employee organization, or by an individual employee or group of employees. Such charges shall be filed in writing with the Commission. Each charge so filed shall be processed in accordance with the rules and regulations of the Commission.

(a) If the administrative law judge's decision is that the City and County or a management employee has engaged in an unfair labor practice, the administrative law judge shall issue cease and desist orders which are not in conflict with the Charter or other provisions of law, and/or shall recommend to the appropriate body that corrective action be taken. Such corrective action shall be taken within five days of the administrative law judge's notification and recommendation.

(b) If the decision is that an employee or employee organization or its agents have engaged in an unfair labor practice, the administrative law judge shall instruct the offending party to take appropriate corrective action. If compliance with the administrative law judge's instruction is not obtained within five days, the administrative law judge shall instruct the appropriate officer, board or commission to take appropriate action. Such action may include, but is not limited to suspension or revocation of privileges provided a registered or recognized employee organization such as dues deduction. Individual employees found by the administrative law judge to have engaged in unfair labor practices shall be subject to such discipline as may be recommended by the administrative law judge to the appointing officer of such employee within the limits of the applicable Charter provisions, and civil service and department regulations. (Amended by Ord. 113-77, App. 3/31/77)

SEC. 16.215. MEETING AND CONFERRING IN GOOD FAITH.

(a) Meeting and conferring in good faith between management representatives and the representatives of recognized employee organi-

zations shall take place on all matters relating to wages, hours, and other terms and conditions of employment including any other matters agreed to by the parties as a subject of bargaining. Nothing contained herein shall be deemed to supersede the provisions of the Charter, ordinances, and rules and regulations of the City and County of San Francisco which establish and regulate the Civil Service System.

(b) If agreement is reached by management and a recognized employee organization, or recognized employee organizations, on matters subject to approval by a determining body or official, they shall jointly prepare a written memorandum of such understanding and present it to the determining body or official for determination. If agreement is reached on matters not subject to approval by a determining body or official, the appropriate level of management and recognized employee organizations shall jointly prepare a written memorandum of such agreement.

(c) Management representatives and representatives of recognized employee organizations may by mutual agreement meet and confer on matters of employment for which meeting and conferring is neither required nor prohibited by this ordinance.

(d) The parties to the meeting and conferring process shall provide timely notice of their intention to meet and confer, and shall mutually arrange a satisfactory scheduling for said meeting and conferring.

(e) Any such memorandum of understanding shall contain the following provisions:

(1) Delivery of municipal services in the most efficient, effective, and courteous manner is of paramount importance to the City and County and its employees. Such achievement is recognized to be a mutual obligation of both parties within their respective roles and responsibilities.

(2) The recognized employee organization recognizes the City and County's right to establish and/or revise performance standards or norms notwithstanding the existence of prior performance levels, norms or standards. Such standards, developed by usual work measurement procedure may be used to determine acceptable

performance levels, prepare work schedules, and to measure the performance of each employee or group of employees.

(3) Employees who work at less than acceptable levels of performance may be subject to disciplinary measures in accordance with the applicable Charter provisions and rules and regulations of the Civil Service Commission.

(4) Any Memorandum of Understanding negotiated in conformity with this ordinance shall contain a clause prohibiting strikes, slowdowns, or work stoppages as long as said Memorandum of Understanding is in full force and effect, and provided further that in the absence of any Memorandum of Understanding, employees' rights concerning concerted labor activity shall be governed by the pertinent laws of this state. (Amended by Ord. 426-76, App. 10/29/76)

SEC. 16.216. IMPASSE PROCEDURES.

If, after a reasonable period of time, the management representative and the representative of a recognized employee organization reach an impasse in the meeting and conferring process, either party may request the assistance of the Mayor in resolving the impasse. If the Mayor finds that the parties have not devoted sufficient time or effort to resolving the impasse, he or she may deny the request and return the matter to the parties for further consideration. If the Mayor concludes that, in fact, an impasse exists, he or she shall notify the parties of same.

(a) After being notified by the Mayor that an impasse does exist, the parties involved shall arrange for the assistance of a mediator from any source agreeable to the parties involved. If the parties cannot agree on a mediator within three days after being notified by the Mayor that an impasse exists, the Mayor shall appoint a mediator who shall have broad experience in the field of employee relations and shall have been selected as a neutral arbitrator in at least 50 cases in Northern California in the preceding four years but shall not include any person who is an employee of the City and County of San Francisco, or who is or has been an official of a labor organization or an organization representing City

and County employees. Such appointment shall be made within five days after such a request is forwarded to the Mayor. All mediation shall be private, and the mediator shall make no public recommendations nor take any public position concerning the issues. The mediator shall make his or her recommendation within 10 days after his or her designation.

(b) If the mediator's recommendation is not acceptable to the parties, they shall within three days of the issuance of the mediator's recommendation make arrangements for the assistance of a fact finder, or a fact-finding board consisting of not more than three members. If the parties cannot agree upon a fact finder, or fact-finding board, within five days of the issuance of the mediator's recommendation, the Mayor shall appoint a fact finder, or a fact-finding board. The Mayor shall effect such appointment or appointments within five days after notification that such appointment or appointments are necessary. The fact finders will have 10 days from the date of appointment to make their recommendations and no extension of time may be requested or granted.

(c) If fact finding is not successful and where arbitration of the subject matter is not in conflict with the Charter or existing law, the parties to meeting and conferring may agree to submit the matter to an impartial arbitrator for determination. The impartial arbitrator shall consider only the issue or issues presented, and his or her determination in the matter shall be final and binding on the parties involved. The impartial arbitrator shall be selected by the parties and shall be an individual with broad experience in the field of employee relations and shall have served as a neutral arbitrator in at least 100 cases in the previous five years.

If the parties cannot agree upon such a person within five days after the decision to arbitrate, the State Conciliation Service shall supply a list of 10 names and, after first determining by lot, the parties shall alternately strike names from the list so supplied and the last individual who is able and willing to serve shall act as the arbitrator. Arbitration shall commence

within four days after his or her designation, and his or her decision shall be rendered within 20 days after the proceedings in arbitration have commenced. His or her decision shall be observed by both parties pending any appeal contesting or challenging the award and the award shall not require Court confirmation before compliance with its terms.

(d) In vital public services, which affect the health, safety or welfare of the general public, the issue or issues unresolved after mediation and fact finding impasse procedures have been followed, and where arbitration of the subject matter is not in conflict with the Charter or existing law, the parties shall submit the matter to an impartial arbitrator for determination. The impartial arbitrator shall consider only the issue or issues presented, and his or her determination in the matter shall be final and binding on the parties involved. For the purposes of this Section, vital public services include public health, hospitals, court and detention personnel, sanitation services, and such other services as may be designated as vital public services by the Commission. The procedure for the selection of the impartial arbitrator and the time limits shall be as set forth in Section 16.216(c).

(e) The cost of mediation, fact finding proceedings and arbitration where applicable shall be divided equally between the City and County and the registered employee organization. No cost shall be imposed upon any employee organization that would exceed the lesser of the following:

(1) The daily stipend of the arbitrator or fact finder or mediator shall not exceed the suggested amount for services of arbitrators designated by the Federal Mediation and Conciliation Service.

(2) Costs to be paid by the employee organizations shall be limited to $\frac{1}{2}$ of the daily stipend of any arbitrator, fact finder or mediator as above provided, and shall not include attorney fees, witness fees, transcripts and any other expenses. Each party shall bear its own costs for such services.

(f) During the period of meeting and conferring between the City and County and the recognized employee organization and the period during which the impasse procedure shall be utilized, the recognized employee organization and the employees it represents shall not initiate, engage in, cause, instigate, encourage or condone work stoppages, slowdowns, mass absenteeism or any other disruptive activities which are detrimental to the conduct of City and County business and services. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.217. DISPUTES CONCERNING MEMORANDUMS OF UNDERSTANDING.

(a) Whenever a dispute arises between parties signatory to a memorandum of understanding regarding the application or interpretation of any provision of the memorandum of understanding, the following procedure shall be taken in order to resolve the dispute:

(1) The aggrieved party shall promptly take the matter up with the other party and both shall endeavor to resolve the dispute.

(2) If the parties cannot settle the dispute within 48 hours, the matter shall be submitted to an administrative law judge for determination. The decision of the administrative law judge shall be final and binding upon the parties involved; provided, however, that memorandums of understanding in effect at the time this ordinance is adopted (October 25, 1973) which specify a different method of resolving disputes concerning interpretation and application of memorandum of understanding, shall not be subject to the provisions of this Section.

(b) The decision of the administrative law judge pursuant to this Section shall be limited to the application and interpretation of the memorandum of understanding and subject to the provisions of the Charter and existing law. The expenses incurred in utilizing the administrative law judge in this arbitration process shall be borne equally by the parties involved in the dispute. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.218. GRIEVANCES.

The existing grievance procedure prescribed by Civil Service Commission Rules provides a progressive series of steps through which employees may present complaints or grievances arising out of their employment or working conditions. This procedure is designed to resolve grievances at the lowest supervisory level consistent with justice and administrative policy. It is the intent of this ordinance that the grievance procedure established by the Civil Service Commission Rules will continue to be used for the above described purposes. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.219. EMPLOYEES MEETING ON CITY AND COUNTY TIME.

(a) Official representatives of a recognized employee organization shall be allowed time off from their duties without loss of pay for the purpose of meeting and conferring in good faith or consulting with representatives of the City and County on matters within the scope of representation, provided that the number of representatives shall not exceed two without the approval of the Human Resources Director. The use of official time for this purpose shall be reasonable and shall not interfere with the performance of City and County services. Official representatives shall receive approval from their department head in advance of the proposed time away from their work station or assignment.

(b) Official representatives of registered employee organizations shall be entitled to the same privileges and charged with the same duties as set forth in Paragraph (a) of this Section for purposes of consulting with representatives of the City and County on matters within the scope of representation. (Amended by Ord. 313-76, App. 7/30/76; Ord. 109-94, App. 3/11/94)

SEC. 16.220. DUES DEDUCTION.

Upon completion of the registration procedures provided in Section 16.209, registered employee organizations may exercise the privilege of dues deduction, and shall pay the reasonable costs of this service. The Controller of the City

and County of San Francisco shall establish the costs and the procedures for initiating and maintaining this service. (Amended by Ord. 313-76, App. 7/30/76)

SEC. 16.222. SEPARABILITY.

If any provision of this ordinance, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this ordinance, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Amended by Ord. 313-76, App. 7/30/76)

ARTICLE XI-B: EMPLOYEE DEFERRED COMPENSATION PLAN

- Sec. 16.301. Establishment of a Deferred Compensation Plan.
- Sec. 16.302. Purpose.
- Sec. 16.320. Administration by Retirement Board.
- Sec. 16.326. Administrative Costs.

SEC. 16.301. ESTABLISHMENT OF A DEFERRED COMPENSATION PLAN.

The Retirement Board shall establish and administer a deferred compensation plan. (Amended by Ord. 306-80, App. 6/27/80)

SEC. 16.302. PURPOSE.

The purpose of this plan is to extend to employees of the City and County of San Francisco and the Superior Court of California, County of San Francisco, certain benefits which ordinarily accrue from participation in a Deferred Compensation Plan. The City and County of San Francisco does not and cannot represent or guarantee that any particular federal or state income, payroll or other tax consequence will occur by reason of an employee's participation in this plan. The participant should consult with his or her own attorney or other representative regarding all taxes consequences of participation of this plan. (Amended by Ord. 306-80, App. 6/27/80; Ord. 178-01, File No. 010941, App. 8/17/2001)

SEC. 16.320. ADMINISTRATION BY RETIREMENT BOARD.

This Deferred Compensation Plan shall be administered by the Retirement Board, which shall prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the plan. The Retirement Board may employ investment counsel to advise the Board concerning categories of investment, investment guidelines and investment policy, provided, however, that the advice or recommendations of any such investment counsel shall not be binding on the Retirement Board, which shall make the

final determination concerning investment categories, investment guidelines and policies. The Retirement Board may contract with a financially responsible independent contractor to administer and coordinate the plan under the direction of the Retirement Board.

The Retirement Board shall enact regulations, applicable to any plan administrator which is not a corporate fiduciary authorized by federal or state law to exercise trust powers or to conduct an insurance business, establishing such bonding requirement as the Retirement Board in its discretion deems appropriate, for such plan administrator, and for every other person who handles funds or other property of the investment fund. The amount of such bond shall be at least \$1,000, but shall never be less than 10 percent of the amount of funds handled. The Retirement Board may, in its discretion, establish guidelines or regulations for the bonding of the plan administrator and of every fiduciary or other person who handles funds or other property of the investment fund. Notwithstanding any other provisions to the contrary, the administrator agrees that it shall be solely responsible to the employer for any and all services performed by a subcontractor, assignee, or designee under this agreement. (Amended by Ord. 306-80, App. 6/27/80)

SEC. 16.326. ADMINISTRATIVE COSTS.

The reasonable and necessary administrative costs of this plan shall be borne by either the City and County of San Francisco, the participants or by any plan administrator appointed hereunder. The administrative costs funded by the City shall not increase above current levels (.01% of City payroll). The Board of Supervisors may carry forward unspent monies from one fiscal year to the next. (Amended by Ord. 306-80, App. 6/27/80; Ord. 334-95, App. 10/27/95)

San Francisco - Administrative Code

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ARTICLE XI-C: [RESERVED]

San Francisco - Administrative Code

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ARTICLE XI-D: EMPLOYEE UNIFORMS

- Sec. 16.450. Finding: Uniforms Should Be Supplied and Owned by City.
- Sec. 16.451. Uniform Supply Records.
- Sec. 16.462. Termination or Change of Employment: Return of Uniforms.

SEC. 16.450. FINDING: UNIFORMS SHOULD BE SUPPLIED AND OWNED BY CITY.

The Board of Supervisors hereby declares and finds that the City should acquire uniforms and equipment items to be furnished as needed to the employees of the Police, Fire, Sheriff's, and Public Transportation departments. The furnishing of uniforms and equipment items by the City to employees is neither intended to constitute additional compensation nor to be considered a part of the rate of pay for such employees. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 16.451. UNIFORM SUPPLY RECORDS.

For each employee of the Public Transformation, Police, Fire, and Sheriff's departments required to wear a uniform or carry equipment issued by the department pursuant to this Chapter or regulations of the respective departments, the department head shall maintain a record of uniform items supplied to each such employee. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 16.462. TERMINATION OR CHANGE OF EMPLOYMENT: RETURN OF UNIFORMS.

(a) **Public Transportation Department.** All items of uniform, uniform insignia, and equipment supplied to an operator by the Public Transportation Department shall be returned as required by management when the operator leaves Public Transportation Department service. Uni-

forms and equipment not so returned shall be paid for by the former employee at cost. The Public Transportation Department may direct that the employee's final paycheck be held until such equipment has been properly returned.

(b) **Police Department.** For employees of the Police Department, upon termination of employment or upon change to a position which does not require wearing of uniforms, each employee having in his or her possession uniform items furnished by the City must deliver such items, in good condition, reasonable wear and tear excepted, and which are less than one year old, to such location as may be designated by the department; or pay for uniform items not so delivered at the rate of 60 percent of the City's purchase price where less than three months have elapsed between purchase of the uniform and the date of termination or change; 40 percent of the City's purchase price where more than three but less than six months have so elapsed; 20 percent where more than six but less than nine months have so elapsed; and 10 percent where more than nine but less than 12 months have so elapsed. All equipment items returned to the department shall be delivered in good condition, reasonable wear and tear excepted, to such location as may be designated by the department head. The department head may require any employee who does not return equipment items in good condition, reasonable wear and tear excepted, to pay for such equipment items at the full replacement cost thereof.

(c) **Sheriff's Department.** Each employee of the Sheriff's Department who is issued clothing uniform items, safety equipment and leather gear issued by the Sheriff's Department must return such clothing uniform items, safety equipment and leather gear upon termination of employment or upon change to a position which does not require the use of such clothing uniform items, safety equipment and leather gear, as determined by the Sheriff. Employees who have

been employed by the Sheriff's Department for two years or more must return only safety equipment and leather gear, as determined by the Sheriff. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

ARTICLE XII: [RESERVED]

San Francisco - Administrative Code

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ARTICLE XIII: ELECTION OF TRUSTEES FOR THE RETIREMENT BOARD AND HEALTH SERVICE BOARD

- Sec. 16.550. Purpose.
- Sec. 16.551. Retirement Board or Health Service Board to Order Elections.
- Sec. 16.552. Dates of Election.
- Sec. 16.553. Notice to Members and Retired Members; Nomination of Members and Retired Members.
- Sec. 16.554. Notice to Registrar or Contractor.
- Sec. 16.555. Notice to Departments; Appointment of Election Officers.
- Sec. 16.556. Instructions to Election Officers.
- Sec. 16.557. Delivery of Ballots and Names of Eligible Voters to Registrar or Contractor.
- Sec. 16.558. Ballots to Contain Instructions for Voting.
- Sec. 16.559. Ballots to be Placed in Addressed Envelopes; Extra Ballots.
- Sec. 16.560. Delivery of Ballots and Instructions to Election Officers.
- Sec. 16.561. Duties of Election Officers.
- Sec. 16.562. Duty of Payroll Department.
- Sec. 16.563. Counting of Ballots and Certification of New Trustee.
- Sec. 16.564. Retirement Board or Health Service Board to Reimburse Registrar.

SEC. 16.550. PURPOSE.

The Charter of the City and County of San Francisco provides that the trustees of the Retirement Board, who are entrusted with the administration of the San Francisco City and County Employee's Retirement System, shall include three trustees elected from the active and retired members of the Retirement System.

As used in this Article, a retired member of the Retirement System shall mean a person who is in receipt of a retirement allowance relating to his or her membership in the retirement system. The Charter of the City and County of San Francisco provides that the trustees of the Health Service Board, who are entrusted with the administration of the San Francisco City and County Employees' Health Service System, shall include three trustees elected from the active and retired members of the Health Service System. As used in this Article, a retired member of the Health Service System shall mean a person who is a member of the Health Service System retired under the San Francisco City and County Employees' Retirement System, State Teachers Retirement System (STRS), Public Employees Retirement System (PERS), and the surviving spouse of an active employee and the surviving spouse of a retired employee, provided that the surviving spouse and the active or retired employee have been married for a period of at least one year prior to the death of the active or retired employee. Whenever the term of office of such an elected trustee expires or whenever a vacancy occurs in such an office so that an election is necessary to fill a present or expected vacancy, the following provisions shall govern the election procedure. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.551. RETIREMENT BOARD OR HEALTH SERVICE BOARD TO ORDER ELECTIONS.

If a vacancy occurs, or will occur, in the office of an elected trustee prior to the date that the term of that office expires, the Retirement Board or Health Service Board shall order a special election to fill the vacancy for the unexpired portion of the term of office, unless another election to a Retirement Board or Health Service

Board office is scheduled to be completed within six months after the vacancy has, or shall, occur, in which case the elections shall be combined; provided, however, that a separate special election shall be required if the election which has already been scheduled will occur too soon to nominate and select candidates for the more recent vacancy. Whenever the Retirement Board or Health Service Board orders an election, the respective Board shall specify whether the election is to be conducted by the Registrar of Voters ("Registrar") or by an unbiased independent contractor ("Contractor"). (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.552. DATES OF ELECTION.

Whenever an election is necessary, either at the completion of a term of office or to fill an unexpired term of office, the Retirement Board or Health Service Board shall specify the dates during which ballots may be marked and delivered. However, the dates designated by the Retirement Board or Health Service Board shall not be within one month before or after an election which has been otherwise scheduled and which involves residents of the City and County of San Francisco as electors. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 378-95, App. 12/7/95)

SEC. 16.553. NOTICE TO MEMBERS AND RETIRED MEMBERS; NOMINATION OF MEMBERS AND RETIRED MEMBERS.

The Retirement Board or Health Service Board shall thereafter notify the members and retired members of the Retirement System or Health Service System respectively of the following:

- (a) The necessity for an election;
- (b) The procedure for nomination and selection of candidates to serve on the Board; and
- (c) The dates that ballots may be marked and delivered and the procedure for voting.

The period of time during which nominations may be made shall be set by the Retirement Board or Health Service Board but in no event shall be less than 31 days. Any person nominated

to serve as a trustee of the Retirement Board or Health Service Board shall, on forms provided by the respective Board for this purpose and by the date set by the respective Board, verify acceptance of the nomination and agree to serve if elected before he or she may be listed as a candidate.

In any election for membership on the Health Service Board, when only one candidate has filed nomination papers, the Registrar of Voters or Contractor shall not conduct an election and shall declare the sole candidate to be a member of the Health Service Board. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.554. NOTICE TO REGISTRAR OR CONTRACTOR.

The Retirement Board or Health Service Board shall notify the Registrar or Contractor at least 120 days prior to the first day that ballots may be marked and delivered (hereafter referred to as the first voting day) that an election shall be held. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 378-95, App. 12/7/95)

SEC. 16.555. NOTICE TO DEPARTMENTS; APPOINTMENT OF ELECTION OFFICERS.

The Registrar or Contractor shall notify each department, office and agency of the City and County of San Francisco (hereunder referred to as "department") at least 90 days prior to the first voting day that the department must designate an employee who shall serve as Election Officer for that department and must inform the Registrar or Contractor at least 60 days prior to the first voting day of the identity of such officer. The Registrar or Contractor shall supply each department with a form which can be returned to the Registrar or Contractor which identifies the employee who has been designated Election Officer. If any department has not designated an Election Officer by the appointed deadline, the Registrar or Contractor shall notify the department that the deadline has passed and shall

continue to provide such notice until such designation has been made. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

**SEC. 16.556. INSTRUCTIONS TO
ELECTION OFFICERS.**

The Registrar or Contractor shall provide written instructions to each Election Officer at least 21 days prior to the first voting day, informing such officer of dates on which ballots will be distributed and collected and the procedure to be followed for their distribution and collection. If any department has failed to designate an Election Officer by the time that the Registrar or Contractor sends these written instructions, the Registrar or Contractor shall thereafter treat the administrative head of the department as the Election Officer until another employee has been designated as such by that department. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 378-95, App. 12/7/95)

**SEC. 16.557. DELIVERY OF BALLOTS
AND NAMES OF ELIGIBLE VOTERS TO
REGISTRAR OR CONTRACTOR.**

The Retirement Board or Health Service Board shall furnish the Registrar or Contractor with the names of the eligible nominees at least 35 days prior to the first voting day.

The Retirement Board or Health Service Board shall also furnish the Registrar or Contractor with a list of the members and retired members of the Retirement System or Health Service System respectively eligible to vote ("voters") in the election at the same time that it furnishes the names of the eligible nominees. A supplemental list shall be furnished to the Registrar or Contractor within two days of the first voting day, which list shall provide the names of eligible voters not included on the original list. These lists shall be in the format required by the Registrar or Contractor. These lists shall include the last known addresses for the members and retired members. For the active members, at the election of the entity conducting the election the

department address shall be provided as an alternative. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

**SEC. 16.558. BALLOTS TO CONTAIN
INSTRUCTIONS FOR VOTING.**

Each ballot shall contain instructions printed on it informing the voters of the procedure to be used in marking the ballot.

Each ballot, or ballot return envelope, shall inform the voter that there are three ways to return the ballot:

(a) By placing the ballot in the container maintained for such purpose by the Election Officer of the voter's department, or by otherwise using the collection procedure arranged for by the Election Officer;

(b) By delivering the ballot personally to the office of the Registrar or Contractor; and

(c) By placing a stamp on the ballot return envelope and mailing the ballot and envelope to the Office of the Registrar or Contractor.

The instructions shall also note the date by which ballots are to be delivered as noted above in order to be counted. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

**SEC. 16.559. BALLOTS TO BE PLACED
IN ADDRESSED ENVELOPES; EXTRA
BALLOTS.**

(a) Members. Each ballot and ballot return envelope shall be mailed in a separate envelope addressed to each employee eligible to vote at the member's individual address provided by the Retirement System or Health Service System. In the alternative, at the election of the entity conducting the election, ballots shall be delivered in care of his or her department.

(b) Retired Members. Each ballot and ballot return envelope shall be mailed in a separate envelope addressed to the retired member at the address provided by the Retirement System or Health Service System. Additional ballots shall be printed and available for members and retired members of the Retirement System or

Health Service System who are eligible to vote but did not receive an individually addressed ballot. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.560. DELIVERY OF BALLOTS AND INSTRUCTIONS TO ELECTION OFFICERS.

(a) Members. The Registrar or Contractor shall cause the ballots and accompanying envelopes to be mailed or delivered pursuant to Section 16.559(a) not later than 10 days prior to the first voting day, along with written instructions for their proper distribution and collection and any other pertinent guidelines as set out in these provisions or as otherwise applicable.

(b) Retired Members. The Registrar or Contractor shall deposit in the mail the ballots and accompanying envelopes to each retired member at least 10 business days prior to the first voting day. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.561. DUTIES OF ELECTION OFFICERS.

Each Election Officer shall:

(a) Prior to the date that ballots are delivered, inform the department or employee responsible for distributing paychecks to employees of the department of the dates during which ballots are to be distributed to employees and of the responsibility of the Payroll Department to make arrangements to distribute a ballot with each paycheck by a date that will allow each voter at least three days to mark and deliver the ballot;

(b) Upon receipt of the ballots, coordinate his or her efforts and those of the Payroll Department to insure that the ballots are ready to be distributed along with paychecks by a date that will allow each voter at least three days to mark and deliver the ballot;

(c) Provide notice to employees who are in the Retirement System or Health Service System but would not be likely to receive ballots

along with their paychecks, such as employees on the temporary payroll, that ballots are available;

(d) Provide ballots to employees who did not, or would not, receive them along with their paychecks pursuant to the procedure established by the Registrar or Contractor;

(e) Establish and maintain a collection procedure so that employees have a convenient method of returning ballots, which method shall, where possible, make use of at least one container in which ballots can be placed; and

(f) Return the ballots which have been received or otherwise collected according to the collection procedure established by such officer to the Registrar or Contractor, either personally or by the inter-office mail system, in a timely manner so that the ballots will be delivered to the Registrar or Contractor by the date established by the Retirement Board or the Health Service Board as the final date for such delivery. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.562. DUTY OF PAYROLL DEPARTMENT.

The Payroll Department shall provide cooperation and assistance in sorting the ballots or performing other tasks necessary to insure that the ballots are distributed along with paychecks by a date that will allow each voter at least three days to mark and deliver the ballot. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 378-95, App. 12/7/95)

SEC. 16.563. COUNTING OF BALLOTS AND CERTIFICATION OF NEW TRUSTEE.

The Registrar or Contractor shall thereafter count the ballots in such a manner that the identity of the individual casting any particular ballot will not be disclosed. Each ballot shall be counted so long as it has been properly marked, signed and delivered. The Registrar or Contractor shall certify the new Health Service Board trustee.

Within five days of the close of voting and prior to certification, the Secretary-General Manager for the Retirement System shall attest to the Registrar or Contractor whether there is a retired member serving as trustee on the Retirement Board:

(a) If, at that time, there is no retired member serving as trustee, the Registrar or Contractor shall certify the individual receiving the highest number of votes as the newly elected trustee of the Retirement Board.

(b) If, at that time, there is a retired member serving as trustee, the Registrar or Contractor shall certify the member (not a retired member) receiving the highest number of votes as the newly elected trustee of the Retirement Board.

Where there is no vacancy, the Registrar or Contractor shall certify the new Retirement Board trustee as close to the expiration of the term as reasonably possible. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 287-94, App. 8/4/94; Ord. 378-95, App. 12/7/95)

SEC. 16.564. RETIREMENT BOARD OR HEALTH SERVICE BOARD TO REIMBURSE REGISTRAR.

The Retirement Board or Health Service Board shall reimburse the Office of the Registrar for the actual expenses incurred by it in conducting Retirement Board or Health Service Board elections. The Retirement Board or Health Service Board shall pay all Contractor expenses when the respective Board specifies that a Contractor conduct a Retirement Board or Health Service Board election. (Added by Ord. 512-80, App. 10/29/80; amended by Ord. 378-95, App. 12/7/95)

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ARTICLE XIV: [RESERVED]

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ARTICLE XV: HEALTH SERVICE SYSTEM

- Sec. 16.700. Participation.
Sec. 16.701. Eligibility for Employer Contributions.
Sec. 16.702. Health Service; Board Composition.
Sec. 16.703. Health Service System; Plan and Contribution Rates.

SEC. 16.700. PARTICIPATION.

The following shall be eligible to participate in the Health Service System:

(a) City and County employees.

(1) All permanent employees of the City and County of San Francisco whose normal work week at the time of inclusion is the system in not less than twenty (20) hours;

(2) All regularly scheduled provisional employees of the City and County of San Francisco whose normal work week at the time of inclusion in the system is not less than twenty (20) hours;

(3) All other employees of the City and County of San Francisco, including "as needed" employees, who have worked one thousand and forty hours (1040) in any consecutive twelve (12) month period and whose normal work week at the time of inclusion in the system is not less than twenty (20) hours.

(b) Elected officials.

(c) All members of the following boards and commissions during their time in service to the City and County of San Francisco:

- (1) Access Appeals Commission
- (2) Airport Commission
- (3) Art Commission
- (4) Asian Art Commission
- (5) Board of Education
- (6) Board of Appeals
- (7) Building Inspection Commission
- (8) Civil Service Commission
- (9) Commission on the Aging

- (10) Commission on the Environment
- (11) Commission on the Status of Women
- (12) Community College District Governing Board
- (13) Concourse Authority
- (14) Elections Commission
- (15) Entertainment Commission
- (16) Ethics Commission
- (17) Fine Arts Museums Board of Trustees
- (18) Fire Commission
- (19) Film and Video Arts Commission
- (20) First Five Commission
- (21) Health Commission
- (22) Health Service Board
- (23) Human Rights Commission
- (24) Human Services Commission
- (25) Juvenile Probation Commission
- (26) Law Library Board of Trustees
- (27) Library Commission
- (28) Municipal Transportation Authority
- (29) Planning Commission
- (30) Police Commission
- (31) Port Commission
- (32) Public Utilities Commission
- (33) Recreation and Parks Commission
- (34) Residential Rent Stabilization and Arbitration Board
- (35) Retirement Board
- (36) Small Business Commission
- (37) Sunshine Ordinance Task Force
- (38) Taxi Commission
- (39) War Memorial and Performing Arts Center Board
- (40) Youth Commission

(d) All officers and employees as determined eligible by the Board of Education of the San Francisco Unified School District.

(e) All officers and employees as determined eligible by the Governing Board of the San Francisco Community College District.

(f) All officers and employees as determined eligible by the governing bodies of the San Francisco Transportation Authority, San Francisco Parking Authority, San Francisco Redevelopment Agency, Treasure Island Development Authority, San Francisco Superior Court and any other employees as determined eligible by ordinance.

(g) All retirees, surviving spouses, surviving domestic partners and resigned employees. For the purposes of this Chapter, resigned employees shall have the same meaning as used in Section A8.425 of the Charter.

(h) All dependents of the foregoing categories as they are determined eligible by the appropriate governing body. (Amended by Ord. 67-86, App. 3/7/86; Ord. 289-00, File No. 001549, App. 12/22/2000; Ord. 181-04, File No. 040741, App. 7/22/2004)

SEC. 16.701. ELIGIBILITY FOR EMPLOYER CONTRIBUTIONS.

The following shall be eligible to receive contributions for participation in the Health Service System as set forth below:

(a) Members of boards and commissions referenced above in Section 16.700(c) and retirees, surviving spouse and domestic partners referenced above in Section 16.700(g), shall receive only the Charter-determined contribution. Members of boards and commissions who were in service on the effective date of this ordinance shall maintain the same types of benefits during their term of service.

(i) Except as may otherwise be required under state or federal law, the surviving spouse or surviving domestic partner of an active employee who is killed in the performance of his or her duty shall continue to receive health benefits under the same terms and conditions provided to the employee prior to the death, or prior to the accident or injury that caused the death.

(b) Employees referenced above in Section 16.700(a), elected officials referenced above in Section 16.700(b), members of the San Francisco Unified School District referenced above in Section 16.700(d) and members of the San Francisco Community College District referenced above in Section 16.700(e) shall receive both the Charter-determined contribution and collectively bargained contributions. Notwithstanding the foregoing, employees referenced above in Section 16.700(a), who are not in active service for more than twelve (12) weeks, shall be required to pay the Health Service System for the full premium cost of membership in the Health Service System, unless the employee shall be on sick leave, workers' compensation, mandatory administrative leave, approved personal leave following family care leave, disciplinary suspensions or on a layoff holdover list where the employee verifies they have no alternative coverage. In accordance with the City's obligations under the Meyers-Milias-Brown Act, the Department of Human Resources shall establish rules and regulations governing whether employees who, after inclusion in the system, work less than twenty (20) hours per week, shall lose eligibility in the system or whether the employee shall be required to make additional contributions to the system.

(c) Dependents of employees referenced above in Section 16.700(a) shall only receive collectively bargained contributions. Dependents of elected officials referenced above in Section 16.700(b) shall only receive contributions specified by ordinance. Dependents of members referenced above in Sections 16.700(d), (e) and (f) shall only receive the contributions specified by the appropriate governing body. Dependents of board and commission members referenced above in Section 16.700(c) shall receive no contribution. Dependents of retired employees referenced above in Section 16.700(g) shall receive contributions only as provided by the Charter.

(d) Resigned employees referenced above in Section 16.700(g) shall not receive any contribution.

(e) Those subgroups referenced above in Section 16.700(f) shall receive contributions as determined by their respective employers. (Added by Ord. 48-95, App. 3/10/95; amended by Ord. 289-00, File No. 001549, App. 12/22/2000)

**SEC. 16.702. HEALTH SERVICE; BOARD
COMPOSITION.**

In any election for membership on the Health Service Board when only one candidate has filed nomination papers and no person has filed a declaration of write-in candidacy, the Director of Elections shall not conduct an election and shall declare the sole candidate to be a member of the Board. (Added by Ord. 439-96, App. 11/8/96)

**SEC. 16.703. HEALTH SERVICE
SYSTEM; PLAN AND CONTRIBUTION
RATES.**

Changes in contribution rates adopted by the Health Service Board, as respects the plans of the Health Service System, to become effective on July 1, 2008 for the fiscal year July 1, 2008 through June 30, 2009, approved by the Health Service Board in actions taken by it on November 8, 2007, January 10, 2008, January 25, 2008 and February 12, 2008, which plans and contribution rates are on file with the Clerk of the Board of Supervisors, are hereby approved. (Formerly Sec. 16.157; amended by Ord. 141-86, App. 4/25/86; Ord. 146-87, App. 5/8/87; Ord. 187-88, App. 5/5/88; Ord. 155-89, App. 5/19/89; Ord. 157-90, App. 5/7/90; Ord. 236-91, App. 6/21/91; Ord. 173-92, App. 6/16/92; Ord. 99-93, App. 4/13/93; Ord. 140-94, App. 4/5/94; Ord. 166-95, App. 5/19/95; Ord. 140-96, App. 4/10/96; Ord. 195-97, App. 5/16/97; Ord. 229-98, App. 7/2/98; Ord. 179-99, File No. 990916, App. 6/25/99; Ord. 124-00, File No. 000735, App. 6/2/2000; renumbered by Ord. 289-00, File No. 001549, App. 12/22/2000; amended by Ord. 110-01, File No. 010454, App. 5/18/2001; Ord. 65-02, File No. 020390, App. 5/10/2002; Ord. 70-03, File No. 030415, App. 4/18/2003; Ord. 67-04, File No. 040219, App. 4/22/2004; Ord. 72-05, File No. 050416, App. 4/27/2005; Ord. 35-06, File No. 060087, App. 3/10/2006; Ord. 44-07, File No. 070117, App. 3/9/2007; Ord. 56-08, File No. 080274, App. 4/10/2008)

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ARTICLE XVI: [RESERVED]

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ARTICLE XVII: EMPLOYEE CAFETERIA PLAN

- Sec. 16.900. Establishment of a Cafeteria Plan.
- Sec. 16.901. Purpose.
- Sec. 16.902. Administration by the Department of Human Resources.
- Sec. 16.903. No Cost to City and County.
- Sec. 16.904. Voluntary Employee Benefits.
- Sec. 16.905. Cafeteria Plan Benefits.
- Sec. 16.906. Health System Membership of Former Supervisors.

SEC. 16.900. ESTABLISHMENT OF A CAFETERIA PLAN.

The Department of Human Resources may establish an employee cafeteria plan as provided and regulated under Section 125 of Title 26 of the United States Internal Revenue Code. (Added by Ord. 175-88, App. 4/28/88; amended by Ord. 370-88, App. 8/10/88; Ord. 105-00, File No. 000536, App. 5/26/2000)

SEC. 16.901. PURPOSE.

The purpose of this plan is to extend to employees of the City and County of San Francisco, San Francisco Unified School District and the San Francisco Community College District those types of benefits that ordinarily accrue from participation in a cafeteria plan. The City and County of San Francisco does not and cannot represent or guarantee that any particular federal or state income, payroll or other tax consequence will occur by reason of an employee's participation in this plan. The participant should consult with his or her own attorney or other representative regarding all tax consequences of participation in this plan. (Added by Ord. 175-88, App. 4/28/88; amended by Ord. 370-88, App. 8/10/88)

SEC. 16.902. ADMINISTRATION BY THE DEPARTMENT OF HUMAN RESOURCES.

The cafeteria plan established pursuant to this Article may be administered by the Depart-

ment of Human Resources which may prescribe such forms, and adopt such rules and regulations as are necessary to carry out the purposes of the plan. The Department of Human Resources may contract with a financially responsible independent contractor to administer and coordinate the plan. (Added by Ord. 175-88, App. 4/28/88; amended by Ord. 370-88, App. 8/10/88; Ord. 105-00, File No. 000536, App. 5/26/2000)

SEC. 16.903. NO COST TO CITY AND COUNTY.

This cafeteria plan shall be administered free of direct cost to, or appropriation by, the City and County of San Francisco. Except as herein provided, all such costs shall be borne by the participants or by any plan administrator appointed hereunder, except to the extent that any subsequent ordinance or appropriation might provide expressly to the contrary. Nothing contained in this Section shall be deemed to prohibit the inclusion of a hold harmless provision in any contract between the City and any plan administrator appointed hereunder, which provision has been approved by the City's Risk Manager pursuant to Administrative Code Section 1.24. (Added by Ord. 175-88, App. 4/28/88; amended by Ord. 370-88, App. 8/10/88; Ord. 105-00, File No. 000536, App. 5/26/2000)

SEC. 16.904. VOLUNTARY EMPLOYEE BENEFITS.

Based upon individual authorized deductions, the Controller is hereby authorized to deduct and collect monies from the salaries or wages of employees of the City and County of San Francisco and the San Francisco Community College District in accordance with San Francisco Administrative Code Sections 16.91 and 16.92. Pursuant to Section 125, this voluntary authorized deduction shall not be revocable by the employee during the cafeteria plan year unless the revocation and new election are in

conformance with Section 125 and the terms of the plan. (Added by Ord. 370-88, App. 8/10/88; amended by Ord. 130-90, App. 4/12/90; Ord. 162-92, App. 6/10/92; Ord. 105-00, File No. 000536, App. 5/26/2000)

**SEC. 16.905. CAFETERIA PLAN
BENEFITS.**

The Board of Supervisors hereby approves the inclusion of those benefit plans qualifying under the employee cafeteria plan as provided and regulated under Section 125 of Title 26 of the United States Code as well as the medical care plans adopted by the Health Service Board and approved by the Board of Supervisors annually under Section A8.422 of the Charter and Administrative Code Section 16.157 and which medical plans are on file with the Clerk of the Board of Supervisors. (Added by Ord. 370-88, App. 8/10/88; amended by Ord. 130-90, App. 4/12/90; Ord. 162-92, App. 6/10/92; Ord. 105-00, File No. 000536, App. 5/26/2000)

**SEC. 16.906. HEALTH SYSTEM
MEMBERSHIP OF FORMER
SUPERVISORS.**

After leaving office as a member of the Board of Supervisors, a former Supervisor may still participate in any plan of the Health Service System, provided that the former Supervisor agrees to, and for so long as he or she does, pay the full cost of such benefit, as determined by the Health Service Board. (Added by Ord. 13-91, App. 1/15/91)

NOTICE OF RECODIFICATION***Editor's Note:***

The text of Proposition J, known as The City and County of San Francisco Taxpayer Protection Amendment of 2000, adopted November 2000, was codified as Article III, Chapter 7, of the Campaign and Governmental Conduct Code, then repealed by Proposition E, adopted November 2003.

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CHAPTER 17: PUBLIC OFF-STREET PARKING FACILITIES

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ARTICLE I: PARKING AUTHORITY

- Sec. 17.1. Need for Parking Authority Expressed.
- Sec. 17.2. Parking Authority Created.
- Sec. 17.3. Powers of the Parking Authority.
- Sec. 17.4. Submission of Budget.
- Sec. 17.5. Annual Reports to Board of Supervisors.
- Sec. 17.6. Officers and Employees Generally.

SEC. 17.1. NEED FOR PARKING AUTHORITY EXPRESSED.

There is a need for a parking authority to function in the City and County under the provisions of the Parking Law of 1949 (codified as California Streets and Highways Code Sections 32500 et seq.). (Res. No. 9126(1939); amended by Ord. 223-96, App. 6/7/96; Ord. 338-99, File No. 992044, App. 12/30/99)

SEC. 17.2. PARKING AUTHORITY CREATED.

A parking authority was created at the time and in the manner prescribed by Section 4 of the Parking Law of 1949. Such parking authority shall be known as the Parking Authority of the City and County of San Francisco and is hereby authorized to transact business and exercise its powers. (Res. No. 9126(1939); amended by Ord. 223-96, App. 6/7/96)

SEC. 17.3. POWERS OF THE PARKING AUTHORITY.

The members of the Parking and Traffic Commission of the City and County of San Francisco (hereafter referred to as the "Parking and Traffic Commission" or the "Commission") shall serve ex officio as the members of the Parking Authority. Subject to the limitations set forth in this Chapter, the Parking and Traffic Commission, when acting as the Parking Authority of the

City and County of San Francisco, shall have all of the powers conferred upon parking authorities by the Parking Law of 1949. (Added by Ord. 223-96, App. 6/7/96)

SEC. 17.4. SUBMISSION OF BUDGET.

The Parking and Traffic Commission shall submit annual or supplemental budgets which shall include Parking Authority expenditures in the same manner, time and subject to the same conditions as if the Parking Authority were a department of the City and County. (Res. No. 9126(1939); amended by Ord. 223-96, App. 6/7/96)

SEC. 17.5. ANNUAL REPORTS TO BOARD OF SUPERVISORS.

The Parking and Traffic Commission shall file with the Board of Supervisors, within 120 days after the close of each fiscal year, an annual report for the Department of Parking and Traffic which shall include a statement of financial affairs for the Parking Authority audited by independent certified public accounts. (Res. No. 9126(1939); amended by Ord. 223-96, App. 6/7/96)

SEC. 17.6. OFFICERS AND EMPLOYEES GENERALLY.

The powers of the Parking Authority under California Streets and Highways Code Section 32801(c) to select and appoint or remove such permanent and temporary officers, agents, counsel and employees as it may require, and to determine their qualifications, duties and compensation, shall be subject to all limitations, rights and benefits applicable to similar employment by the City and County except that the positions of Director and Assistant Director of the Parking Authority shall be exempt from civil service requirements. (Res. No. 9283(1939); amended by Ord. 223-96, App. 6/7/96)

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ARTICLE II: ACQUISITION AND OPERATION OF FACILITIES

- Sec. 17.7. Authority to Acquire and Operate Off-Street Parking Facilities.
- Sec. 17.8. Jurisdiction Over Parking Facility Sites; Administration of Leases and Management Agreements.
- Sec. 17.9. Procedure for Making Recommendations to Board.
- Sec. 17.10. Approval or Rejection of Recommendations by Resolution of Board; Contents of Resolution of Approval.
- Sec. 17.11. Leases and Management Agreements for Parking Facilities.
- Sec. 17.12. Parking Facilities Under Public Parks.
- Sec. 17.13. Modification of Leases and Management Agreements.
- Sec. 17.14. Recommendations of Parking and Traffic Commission.
- Sec. 17.15. Methods of Accounting; Inspection of Books and Records.
- Sec. 17.16. Inspection of Parking Facilities.
- Sec. 17.17. Inapplicability of Chapter to Parking Facilities at the Airport or the Port.
- Sec. 17.18. Inapplicability of Article to Facilities Established Under Parking Law of 1949.
- Sec. 17.19. Authority of Parking and Traffic Commission to Execute Agreements Establishing Standards for Issuance of Courtesy Coupons.

SEC. 17.7. AUTHORITY TO ACQUIRE AND OPERATE OFF-STREET PARKING FACILITIES.

The City and County and the Parking Authority may each acquire by purchase, lease or oth-

erwise land, improvements and other property as necessary and appropriate for use as public off-street parking lots and garages (referred to in this Chapter as "parking facilities") and each may, for such use, lease or enter into management agreements with respect to property owned or controlled by it, in accordance with the provisions of this Article. Any such lease of or management agreement for all or part of any such property may also provide for the performance thereon of services or undertakings for the public incidental or advantageous to such public parking project and which are reasonably necessary in order to utilize such property as a public parking facility for the purpose of regulating, controlling and relieving the congestion of street traffic. (Ord. No. 9072(1939), Sec. 1; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.8. JURISDICTION OVER PARKING FACILITY SITES; ADMINISTRATION OF LEASES AND MANAGEMENT AGREEMENTS.

Except as otherwise provided in the Charter, the Parking and Traffic Commission shall have jurisdiction and control over all parking facilities that are owned by the City and County or the Parking Authority; provided that, regardless of such jurisdiction and control, the Director of Property shall assist in the administration of all leases and management agreements with respect to such parking facilities. The parking facilities which are the subject of this Chapter are not public utilities and are not subject to the Public Utilities Commission's jurisdiction or control. (Added by Ord. 223-96, App. 6/7/96)

SEC. 17.9. PROCEDURE FOR MAKING RECOMMENDATIONS TO BOARD.

Recommendations for the procurement of sites for public parking facilities or for the leasing or use of City and County property for such purposes shall be made to the Board of Supervisors

by the Parking and Traffic Commission following a study of the public necessity, convenience and benefit thereof, and the approval of the necessary City departments or commissions. Such studies and recommendations shall be made by the Parking and Traffic Commission from time to time, either on its own initiative or by request of the Board; provided, that funds are available therefor. Any such study shall include an investigation, consideration and conclusion of the necessity for the City and County to accomplish the public purposes of the public parking facility to serve the area of the City and County in which such site is proposed to be located and the City and County as a whole. (Ord. No. 9072(1939), Sec. 2; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.10. APPROVAL OR REJECTION OF RECOMMENDATIONS BY RESOLUTION OF BOARD; CONTENTS OF RESOLUTION OF APPROVAL.

The Board of Supervisors, by resolution, shall approve or reject recommendations as submitted or in amended form and in the event of approval, shall designate the property or site owned, controlled or to be acquired for the purpose by the City and County, as a site for a public off-street parking facility and shall direct the method of operation, the leasing or acquisition thereof for leasing or other operation to accomplish thereby the public purposes set forth in this Article. (Ord. No. 9072(1939), Sec. 3; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.11. LEASES AND MANAGEMENT AGREEMENTS FOR PARKING FACILITIES.

(a) Except as provided in subsection (c) below, all leases and management agreements for the use or operation of parking facilities by private persons or entities shall be awarded through a competitive bid process developed and implemented by the Director of Transportation or his or her designee in consultation with the Director of Property; provided, however, a competitive bid process, combined with a request for proposal ("Bid/RFP Process") which shall take into consideration qualifications and experience,

may be utilized when it is determined by the Municipal Transportation Agency's Board of Director or Parking Authority that such a process would be in the best interest of the public. In a Bid/RFP Process, the cost to the City for the lease of and management agreement for a parking facility shall constitute not less than sixty percent (60%) of all points granted in the selection of the successful operator. The authority given to the Parking Authority and Municipal Transportation Agency to use the Bid/RFP Process shall sunset on June 1, 2007, unless the Board of Supervisors, by ordinance, continues this authorization. Prior to such reauthorization by the Board of Supervisors, the Bid/RFP Process shall be reviewed by the Parking Authority or Municipal Transportation Agency to determine if the utilization of the Bid/RFP Process has been in the best interest of the public, and a report shall be submitted to the Board of Supervisors.

(b) The award of leases and management agreements for parking facilities shall require the approval of the Board of Supervisors by resolution. All leases and management agreements submitted to the Board of Supervisors for its approval shall be in substantially final form and shall contain provisions designed to assure that use of the parking facility in question will be in the public interest. Such leases and management agreements shall, among other things, set forth the following:

(1) A covenant that the public shall be entitled, as a matter of right, to use the parking facility, subject to established rates and charges;

(2) A description of the public uses and purposes permissible on or in such parking facility;

(3) A schedule of the permitted rates and charges;

(4) A schedule of the minimally required hours and days of operation;

(5) A description of restrictions, if any, on all-day or monthly parking.

(c) Notwithstanding anything to the contrary elsewhere in this Chapter, when authorized and directed by a resolution of the Parking

and Traffic Commission, a lease of or management agreement for a parking facility or a parking facility site may be awarded, without competitive process, to a nonprofit association or corporation, for the purpose of facilitating financing of a facility, on such terms and conditions as are approved by the Board of Supervisors by resolution. (Added by Ord. 223-96, App. 6/7/96; amended by Ord. 104-99, File No. 981935, App. 5/7/99; Ord. 3-01, File No. 001798, App. 1/26/2001; Ord. 236-02, File No. 020663, App. 12/20/2002)

**SEC. 17.12. PARKING FACILITIES
UNDER PUBLIC PARKS.**

Pursuant to Section 4.113 of the Charter, the Parking and Traffic Commission shall be responsible for leasing or entering into management agreements for the operation of parking facilities situated in subsurface space under any public park, square or playground. The establishment and administration of such leases or management agreements shall be subject to all provisions of Charter Section 4.113 and this Chapter.

The expenses incurred by the Parking and Traffic Commission in managing and operating such parking facilities, including but not limited to expenses incurred in establishing and administering the leases or management agreements and in making necessary improvements and performing necessary maintenance to the parking facilities, shall be paid out of the revenues derived from such leases or management agreements. After such expenses are paid, any revenues remaining shall be credited to and any losses debited from the Recreation and Park Department. (Added by Ord. 223-96, App. 6/7/96)

**SEC. 17.13. MODIFICATION OF LEASES
AND MANAGEMENT AGREEMENTS.**

All leases of or management agreements for parking facilities shall provide that the lessees or operators shall charge the public the rates and charges that are initially fixed or thereafter changed by the Board of Supervisors, and shall comply with any other modifications of the lease

or operating agreement that are required or permitted by this Chapter. (Ord. No. 9072(1939), Sec. 6; amended by Ord. 223-96, App. 6/7/96)

**SEC. 17.14. RECOMMENDATIONS OF
PARKING AND TRAFFIC COMMISSION.**

Periodically, the Parking and Traffic Commission shall conduct a review of the rates and charges imposed on the public for the use of parking facilities under the jurisdiction of the Parking and Traffic Commission and shall render a written report and recommendations thereon to the Board of Supervisors.

The Board shall review the report and the recommendations and shall by resolution adjust the rates and charges and/or make other modifications of the lease or management agreement in order to provide an adequate return to the lessee or operator and to protect the public interest.

The Commission and each lessee or operator, through the Commission, shall have the right at all times to apply to the Board for an adjustment of public parking rates and charges or other modifications of the lease or operating agreement for a parking facility. Applications by a lessee or operator shall be by written petition filed with the Parking and Traffic Commission with copies delivered to the Board of Supervisors. The Parking and Traffic Commission shall report thereon to the Board within 30 days of such filing or within such further time as may be allowed by motion of the Board. Parking rates and charges shall at all times be subject to review and revision by the Board, but only after the Parking and Traffic Commission has made a recommendation.

Notwithstanding the above, the Parking and Traffic Commission shall have the authority to establish and implement new public parking rates at parking facilities under the jurisdiction of the Parking and Traffic Commission on a 360-day trial basis. Upon termination of the 360-day period, the Commission shall either rescind the interim rates or have obtained approval from the Board of Supervisors for an adjustment of the rates. When the Commission requests Board approval for an adjustment of

rates after a trial period, the Commission shall provide a report analyzing the impact on City revenues from the parking rates charged during the trial period. The Executive Director of the Department of Parking and Traffic shall have the authority to establish public parking rates for special events not to exceed fourteen consecutive days.

Notwithstanding the foregoing or any prior action of the Board of Supervisors, the Parking and Traffic Commission may, on account of a special event and in its discretion, adjust rates and charges for parking at any public off-street parking facility for which the Board of Supervisors ordinarily fixes rates and charges; provided that:

(a) The rate adjustment is not in breach of any contractual obligations;

(b) The rate adjustment is only in effect on the day(s) and at the time(s) of the special event;

(c) When the special event came to the attention of Parking and Traffic staff, there was not sufficient time prior to the special event to obtain the rate adjustment from the Board of Supervisors;

(d) If the primary sponsor or organizer of the special event requested the rate adjustment, then, in the opinion of the Parking and Traffic Commission, that sponsor or organizer acted reasonably in bringing the request and did not delay in order to avoid seeking such an adjustment from the Board of Supervisors;

(e) If the adjusted rates and charges are higher than the rates and charges as fixed by the Board of Supervisors, then:

(1) In light of anticipated demand for parking on the day(s) and at the time(s) of the special event, the Parking and Traffic Commission does not expect that higher rates will result in a significant reduction in use of the parking facility, and

(2) The adjusted rates are competitive in light of the rates that are likely to be charged at other parking facilities in the area on the day(s) and at the time(s) of the special event; and

(f) If the adjusted rates and charges are lower than the rates and charges as fixed by the Board of Supervisors; then:

(1) The primary sponsor or organizer of the special event is a not-for-profit, eleemosynary organization or association,

(2) On the day(s) and at the time(s) of the special event the garage would ordinarily be either closed or open but significantly less than full,

(3) In the opinion of the Parking and Traffic Commission, lower rates are necessary in order to encourage the public to attend the special event,

(4) The adjusted rates are sufficient to cover the cost of operating the garage during the special event, and

(5) The adjusted rates apply only to those users of the garage that present evidence (in a form agreed to between the primary sponsor or organizer of the special event and the Parking and Traffic Commission) that they are attending the special event. (Ord. No. 9072(1939), Sec. 7; amended by Ord. 154-95, App. 5/12/95; Ord. 223-96, App. 6/7/96; Ord. 338-99, File No. 992044, App. 12/30/99)

SEC. 17.15. METHODS OF ACCOUNTING; INSPECTION OF BOOKS AND RECORDS.

Each lessee or operator of a parking facility shall comply with the directions of the Controller with respect to the forms and methods of accounting for the financial transactions of such parking facility. The Controller and his or her authorized representatives shall have the right and the duty periodically to examine and inspect the books and other records of each lessee or operator that relate to the operations of such parking facility.

Each lessee or operator shall maintain on the premises or at such other location as is permitted by the Controller all appropriate books and records, which shall be maintained on a current basis. The Controller shall have the right at all reasonable times to make copies of such books and records. (Ord. No. 9072(1939), Sec. 8; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.16. INSPECTION OF PARKING FACILITIES.

The Director of Property, the Parking and Traffic Commission and the authorized representatives of each shall have the right at any time to enter and inspect any parking facility in order to obtain information relative to the management and operation of the parking facility, the physical condition of the parking facility and the satisfaction of the public interests and public purposes intended to be served by the parking facility. (Added by Ord. 223-96, App. 6/7/96)

City Controller, to execute agreements with the Parking Association of California ("the Association") or other organization representing the interests of the disabled in order to establish standards and procedures for issuance of Courtesy Coupons to disabled persons to enable them to use parking facilities at a reduced charge and to provide for periodic review by the City Controller of the organization's books and records pertaining to issuance of such coupons. (Added by Ord. 238-86, App. 6/20/86; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.17. INAPPLICABILITY OF CHAPTER TO PARKING FACILITIES AT THE AIRPORT OR THE PORT.

The provisions of this Chapter shall not apply to parking facilities located or to be located on property at the airport or port. (Ord. No. 9072(1939), Sec. 10; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.18. INAPPLICABILITY OF ARTICLE TO FACILITIES ESTABLISHED UNDER PARKING LAW OF 1949.

The Parking and Traffic Commission, when acting as the Parking Authority, is not required to apply the provisions of this Article to public off-street parking facilities which have been or may be established by the Parking Authority under the provisions of the Parking Law of 1949.

Notwithstanding the above, nothing herein shall prohibit the Parking and Traffic Commission, when acting as the Parking Authority, from deciding by resolution to adhere to any or all of the provisions of this Article in connection with public off-street parking facilities which have been or may be established under the provisions of the Parking Law of 1949. (Ord. No. 9072(1939), Sec. 11; amended by Ord. 223-96, App. 6/7/96)

SEC. 17.19. AUTHORITY OF PARKING AND TRAFFIC COMMISSION TO EXECUTE AGREEMENTS ESTABLISHING STANDARDS FOR ISSUANCE OF COURTESY COUPONS.

The Parking and Traffic Commission is hereby authorized and directed, with the approval of the

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CHAPTER 18: PAYROLL PROCEDURE

- Sec. 18.1. "Department Head" Defined.
- Sec. 18.2. Preparation of Timesheets and Payrolls.
- Sec. 18.7.1. Designation of Person to Receive Warrants or Checks on Death of Employee.
- Sec. 18.9. Bi-Weekly Pay Periods.
- Sec. 18.12. Work Period Fair Labor Standards Act.
- Sec. 18.13-1. Maximum Permissible Overtime.
- Sec. 18.13-5. Overtime Reporting.
- Sec. 18.14. Employee Information Reports.

SEC. 18.1. "DEPARTMENT HEAD" DEFINED.

The term "department head," as used in this Chapter, shall be construed to mean the officer, board or commission having the charge and management of a separate department or office of the City and County. (Bill No. 37, Ord. No. 9.0551(C.S.))

SEC. 18.2. PREPARATION OF TIMESHEETS AND PAYROLLS.

The Controller shall establish payroll procedures for the various departments of the City and County. Each department head shall be responsible for adhering to those procedures. (Amended by Ord. 161-68, App. 6/26/68; Ord. 327-00, File No. 001922, App. 12/28/2000)

Secs. 18.3. through 18.7.
(Amended by Ord. 161-68, App. 6/26/68; repealed by Ord. 327-00, File No. 001922, App. 12/28/2000)

SEC. 18.7.1. DESIGNATION OF PERSON TO RECEIVE WARRANTS OR CHECKS ON DEATH OF EMPLOYEE.

Pursuant to Government Code Section 53245, a person now or hereafter employed by the City

and County of San Francisco may file with his or her appointing officer a designation of a person who, notwithstanding any other provision of law, shall, on the death of the employee, be entitled to receive all checks that would have been payable to the decedent had he or she survived. The employee may change the designation from time to time. A person so designated shall claim such checks from the Controller. On sufficient proof of identity, the Controller shall deliver the checks to the claimant. Effective July 1, 1996, if an employee has not filed a designation of a person to receive his or her checks upon his or her demise, any checks due to that employee may be made payable to the estate of said employee and delivered by the Controller to the beneficiary named pursuant to section 16.79 of the Administrative Code. (Added by Ord. 85-96, App. 3/1/96; amended by Ord. 327-00, File No. 001922, App. 12/28/2000)

Sec. 18.8.
(Amended by Ord. 205-78, App. 4/21/78; repealed by Ord. 327-00, File No. 001922, App. 12/28/2000)

SEC. 18.9. BI-WEEKLY PAY PERIODS.

Pursuant to the provisions of Section 6.303 of the Charter, all salaries and wages earned by employees of the City and County shall be payable bi-weekly in accordance with regulations established by the Controller. (Amended by Ord. 161-68, App. 6/26/68; Ord. 327-00, File No. 001922, App. 12/28/2000)

Sec. 18.10.
(Amended by Ord. 161-68, App. 6/26/68; repealed by Ord. 327-00, File No. 001922, App. 12/28/2000)

Sec. 18.11.
(Added by Ord. 441-81, App. 8/21/81; repealed by Ord. 327-00, File No. 001922, App. 12/28/2000)

SEC. 18.12. WORK PERIOD FAIR LABOR STANDARDS ACT.

Pursuant to the Fair Labor Standards Act of 1938 as amended, Title 29 U.S.C. 201 et seq. and, in particular, Section 207 thereof and pursuant to implementing regulations in 29 C.F.R. parts 500 to 899 and, in particular, parts 778 thereof, the City and County of San Francisco hereby adopts as its official work period (or work week) a seven-day 168-hour period commencing on Saturday 12:01 a.m. April 5, 1986, and ending on midnight of Friday 12:00 p.m. April 11, 1986, and continuing at recurring work periods of seven consecutive 24-hour periods or 168 consecutive hours thereafter.

This work period shall be applicable to all officers and employees of the City and County of San Francisco except where a board, commission or appointing officer after meeting and conferring regarding the impact insofar as required by State law, has made a written election under the Fair Labor Standards Act of a different work period for some or all of the employees under its jurisdiction. (Added by Ord. 152-86, App. 5/2/86)

SEC. 18.13-1. MAXIMUM PERMISSIBLE OVERTIME.

(a) No appointing officer shall suffer or permit any employee to work overtime hours that exceed, in any fiscal year, 16 percent of the number of hours that the employee is regularly scheduled to work on a straight-time basis in that fiscal year. For the purpose of calculating the maximum number of overtime hours an employee is permitted to work under this Section, hours attributed to vacation shall be deemed included in the hours the employee is regularly scheduled to work on a straight-time basis in a fiscal year.

(b) An appointing officer may, by written authorization, require an employee to work overtime hours in excess of the limitation set forth in Subsection (a). The appointing officer shall submit a biannual report to the Board of Supervisors on January 5th and May 1st of each year justifying any excess overtime granted pursuant to this subsection.

(c) The provisions of Subsection (a) shall not apply to overtime worked by any employee where the City and County of San Francisco incurs no direct or indirect additional costs and where the employee acquires no right to compensatory time off. For the purposes of this Section, "direct or indirect additional costs" includes any additional salary, wages, compensatory time or any other benefit provided at that time or deferred until a later date.

(d) The provisions of Subsection (a) shall not apply to work performed by members of the uniformed ranks of the Police and Fire Departments, transit operators and transit operator supervisors of the San Francisco Municipal Railway, nurses and other emergency workers employed by the Department of Public Health, or any other employee when the work is required pursuant to a standing directive of the appointing officer to complete a task after the end of the employee's regularly scheduled shift or to fill emergency staff shortages. (Formerly Sec. 18.13; added by Ord. 211-88, App. 5/25/88; amended by Ord. 138-95, App. 5/5/95; Ord. 428-97, App. 11/17/97; amended and renumbered by Ord. 327-00, File No. 001922, App. 12/28/2000)

SEC. 18.13-5. OVERTIME REPORTING.

(a) The Controller, with the assistance of department heads, shall submit a biannual report by February 1st and May 1st of each year to the Budget Analyst, with copies to the Board of Supervisors. The report shall include:

(1) Budgeted salaries for the immediately preceding fiscal year, budgeted overtime for the immediately preceding fiscal year, and budgeted overtime as a percentage of budgeted salaries for the immediately preceding fiscal year;

(2) Actual salary expenditures for the immediately preceding fiscal year, actual overtime expenditures for the immediately preceding fiscal year, and actual overtime expenditures as a percentage of actual salary expenditures for the immediately preceding fiscal year;

(3) Actual year-to-date salary expenditures for the current fiscal year, actual year-to-date overtime expenditures for the current fiscal year,

and actual year-to-date overtime expenditures as a percentage of actual year-to-date salary expenditures for the current fiscal year;

(4) Projected salary expenditures for the current fiscal year, projected overtime expenditures for the current fiscal year, and projected overtime expenditures as a percentage of projected salary expenditures for the current fiscal year; and

(5) Such other information as the Budget Analyst may require.

(b) The Budget Analyst shall report back to the Board of Supervisors and to the Finance Committee (or such other committee of the Board as is responsible for budgetary matters) by March 1st and June 1st, respectively, with its assessment of said report and the status of City overtime expenditures as a whole. The Budget Analyst's report shall also discuss as appropriate the accuracy and completeness of the information provided by the Controller.

(c) The intent of the Board of Supervisors, in adopting this Section, is to establish administrative procedures for the guidance of its appointing officers. It is not assuming, nor is it imposing on the City and County of San Francisco or on its officers or employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach caused injury. (Added by Ord. 327-00, File No. 001922, App. 12/28/2000)

SEC. 18.14. EMPLOYEE INFORMATION REPORTS.

(a) Each department or office, through the head thereof or an employee designated by him or her, shall initially report all employees currently employed by that department or office, and thereafter shall report all employees who are newly hired or rehired or returning to work from a lay off, furlough, separation, leave of absence without pay, or termination to the Controller at such times and in such manner as the Controller, by regulation, may require.

(b) It shall be the duty of the Controller to report information required by the State Employment Development Department. (Added by Ord. 2-95, App. 1/13/95; amended by Ord. 327-00, File No. 001922, App. 12/28/2000)

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CHAPTER 19. COMMUNITY SAFETY CAMERA ORDINANCE

- Sec. 19.1. Short Title.
- Sec. 19.2. Definitions.
- Sec. 19.3. Limitations on Community Safety Cameras.
- Sec. 19.4. Approval and Auditing of Additional Community Safety Cameras.
- Sec. 19.5. Notice Requirements.
- Sec. 19.6. Protocols for Oversight and Access to Surveillance Information.
- Sec. 19.7. Severability.

SEC. 19.1. SHORT TITLE.

This ordinance shall be known and may be cited as the Community Safety Camera Ordinance. (Added by Ord. 127-06, File No. 060086, App. 6/22/2006)

SEC. 19.2. DEFINITIONS.

(a) **Community Safety Camera.** For the purposes of this Chapter, the term "community safety camera" means any digital recording surveillance system installed at fixed locations in an open and obvious manner by the City and County of San Francisco to film public streets, sidewalks or common areas of public housing complexes. It does not include surveillance cameras designed to record the regular and ongoing operations of City departments, including but not limited to mobile in-car video systems, jail observation and monitoring systems, traffic reporting cameras, and building security taping systems. In addition, it does not include surveillance cameras installed for security purposes at the San Francisco International Airport, the San Francisco Unified School District or in San Francisco Municipal Railway facilities or vehicles. (Added by Ord. 127-06, File No. 060086, App. 6/22/2006)

SEC. 19.3. LIMITATIONS ON COMMUNITY SAFETY CAMERAS.

The City and County of San Francisco may install community safety cameras for the pur-

pose of enhancing public security only in locations experiencing substantial crime and where the potential to deter criminal activity outweighs any concerns asserted by the affected community as determined by the Police Commission. The cameras shall record areas perceptible to the human eye from public streets and sidewalks only. Images obtained by the community safety cameras may be released only to the following:

(a) Sworn members of the San Francisco Police Department holding the rank of Inspector or higher only. Police shall limit review of images to investigation of specific crimes; and

(b) The Public Defender, other criminal defense attorney, or an investigator appointed by the Court to assist a pro se criminal defendant. Requests may be made only in connection with the investigation or defense of a charged criminal case. The requesting individual may disclose the recording only to the defendant and any expert retained by the requesting individual, and to no other individual. This Subsection (b) shall not preclude the requesting individual from disclosing any recording during a hearing or trial in the charged criminal case if the Court approves such disclosure. Any person who discloses a recording in violation of this Subsection (b) shall be deemed guilty of a misdemeanor and may be punished by a fine not exceeding \$1,000.00, imprisonment in the county jail for not more than six months, or both such fine and imprisonment; and

(c) The District Attorney as provided in Section 19.6. (Added by Ord. 127-06, File No. 060086, App. 6/22/2006; Ord. 32-08, File No. 071536)

SEC. 19.4. APPROVAL AND AUDITING OF ADDITIONAL COMMUNITY SAFETY CAMERAS.

(a) **Recommendation for Camera Installation by Director.** If the Director of the Mayor's Office of Criminal Justice ("MOCJ") finds that a

particular location is experiencing substantial crime and that the potential to deter criminal activity outweighs any concerns asserted by the affected community, the Director may recommend approval of a new community safety camera in that location to the Police Commission. The Police Commission shall calendar consideration of the matter no sooner than 30 days and no later than 60 days from MOCJ's notification.

(b) **Public Hearing Required.** The Police Commission shall conduct a public hearing to determine whether or not to install the camera. The MOCJ shall create and distribute to the Police Commission and the public a report justifying the camera at the particular location 20 days prior to the first public hearing on the proposed installation. The report shall include, for each proposed new camera location: (1) the reason for installing the camera at the particular location, including crime statistics for the area and (2) the proposed area/range to be covered. The Police Commission may continue its consideration of the proposal for up to 30 days in order to receive more information from the Director of the MOCJ, the Police Department, or community organizations or to further consider the proposal. The decision of the Police Commission shall be rendered within 30 days from the date of the first hearing.

(c) **Approval of Camera Installation by Police Commission.** The Police Commission may approve the camera's installation after a hearing, provided that the Commission finds that the proposed location is experiencing substantial crime, the potential to deter criminal activity outweighs any concerns asserted by the affected community, and there exists significant support from the affected community for the camera.

(d) **Annual Report to the Board of Supervisors and to the Police Commission.** The Police Department shall prepare an annual report on all community safety cameras located in the City and County of San Francisco. The report shall identify the camera locations, the crime statistics for the vicinity surrounding each camera both before and after the camera is

installed, crime statistics from surrounding vicinities, the number of times the Police Department requested copies of the recorded images, the number of times the images were used to bring criminal charges, the types of charges brought, and the results of the charges. The Department shall issue the first report no later than one year following the date of the first camera installation approval by the Police Commission and not less often than once yearly thereafter. Based upon information provided in the annual report, the Police Commission may direct the removal of any individual camera(s). (Added by Ord. 127-06, File No. 060086, App. 6/22/2006)

SEC. 19.5. NOTICE REQUIREMENTS.

(a) **Public Notice of Proposed Cameral Installation.** At least 20 days before the Police Commission considers a recommendation to install a new community safety camera, the Department of Information and Telecommunications Services ("DTIS") shall post a minimum of 4 signs, as set forth below, within a 100 foot radius of the location at which the camera is proposed. Signs shall remain posted through the date of approval or disapproval of the camera installation by the Police Commission.

(1) **Number of Signs.** The Director of the MOCJ may approve additional signs if deemed necessary to provide adequate notice to the public.

(2) **Contents and Size of Signs.** Each sign shall be at least thirty inches by thirty inches. The signs shall be entitled NOTICE OF INTENT TO APPROVE A COMMUNITY SAFETY CAMERA AT THIS LOCATION. The lettering of the title shall be at least 1¼-inch capital letters. All other letters shall be at least ¾-inch uppercase and ½-inch lowercase. Each sign shall include the time and date of the Police Commission's approval hearing, a Police Commission contact person, and a telephone number where members of the public may obtain additional information and/or submit comments. Signs shall be posted in languages appropriate to the specific neighborhood, as determined by the Director of the MOCJ.

(3) **Production of Signs.** The Director of the MOCJ shall develop a standardized sign that meets the requirements of this Section.

(b) **Additional Notice Provisions.** In addition to the signposting requirements in Section 19.5(a), the Director of the MOCJ may use mailed notices. If the Director uses mailed notices, the Director shall send notices to:

(1) The owner of each property within 300 feet of the proposed camera location as reflected on the latest Citywide Assessor roll.

(2) Neighborhood associations and organizations listed with the Planning Department as representing businesses, owners or occupants located within 300 feet of the proposed camera location, and

(3) To the extent practicable, the occupants of each property within 300 feet of the proposed camera location.

The mailed notice shall include, at a minimum, all of the information required in Section 19.5(a)(ii). Mailed notice shall be sent at least 20 days prior to the Police Commission's consideration of approval to install a community safety camera.

(c) **Notice for Approved Cameras.** Upon approval by the Police Commission and installation of a new community safety camera, the Director of the DTIS shall post a conspicuous sign within 25 feet of the location of the camera. The sign shall state that the area is under camera surveillance. Additionally, the Police Department shall publish on the Department's website the location of all cameras installed throughout the City. The Department shall update the site within 30 days of each new camera installation. (Added by Ord. 127-06, File No. 060086, App. 6/22/2006)

SEC. 19.6. PROTOCOLS FOR OVERSIGHT AND ACCESS TO SURVEILLANCE INFORMATION.

(a) Access to the recorders for community safety cameras shall be limited to personnel from the DTIS for purposes of installation, repair, maintenance and upgrades, and to Custodian of

Records staff from the Emergency Communications Department ("ECD"). ECD staff shall be responsible for proper release of the records.

(b) The camera recording devices shall be kept in secure areas with password protection for access.

(c) Members of the Police Department may obtain copies of the recordings by presenting a written request to ECD. The request shall be submitted by an Inspector of the SFPD, and approved by a Captain or the Deputy Chief of Inspectors. In exigent circumstances only, ECD may release the information to an Inspector prior to receipt of a written request, but the Inspector must then provide a written justification for the release, including specification of the exigent circumstances. Within 7 days from the release under exigent circumstances, the SFPD Inspector must submit, in writing, the supervisor's and captain's approval of the Inspector's initial request.

(d) ECD may only release records to agencies other than the SFPD pursuant to a court order. ECD must notify the Board of Supervisors within 7 days of any release pursuant to a court order.

(e) Under no circumstances may recordings from community safety cameras be used for personal purposes.

(f) DTIS shall ensure that the community safety cameras retain data for a period not to exceed 14 days. (Added by Ord. 127-06, File No. 060086, App. 6/22/2006; Ord. 32-08, File No. 071536)

SEC. 19.7. SEVERABILITY.

If any part or provision of this Chapter, or the application of this Chapter to any person or circumstance, is held invalid, the remainder of this Chapter, including the application of such part or provisions to other persons or circumstances, shall not be affected by such holding and shall continue in full force and effect. To this end, the provisions of this Chapter are severable. (Added by Ord. 127-06, File No. 060086, App. 6/22/2006)

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CHAPTER 19A: PUBLIC HEALTH

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San Francisco - Administrative Code

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ARTICLE I: CONTRACTS

Sec. 19A.5. Aid from State Department of Public Health.

SEC. 19A.5. AID FROM STATE DEPARTMENT OF PUBLIC HEALTH.

The Director of Public Health is authorized, subject to approval of the Health Commission to accept on behalf of the City and County, aid from the State Department of Public Health and to enter into contracts therefor when such aid is proffered, whether such aid is in the form of money, equipment, services of personnel, or otherwise; provided that no such agreement shall obligate the City and County to expend any funds other than those received from the State of California, except as authorized by appropriations made in accordance with the fiscal procedure of the Charter. (Amended by Ord. 265-85, App. 5/30/85)

San Francisco - Administrative Code

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ARTICLE II: ASTHMA TASK FORCE

- Sec. 19A.20. Establishment and Membership of Asthma Task Force.
- Sec. 19A.21. Purpose of Task Force.
- Sec. 19A.22. Conduct of Business.
- Sec. 19A.23. Sunset Provision.

SEC. 19A.20. ESTABLISHMENT AND MEMBERSHIP OF ASTHMA TASK FORCE.

There is hereby established an Asthma Task Force of the City and County of San Francisco. Membership in the Asthma Task Force shall consist of a total of twenty-seven (27) members. The Department of Public Health shall provide clerical assistance and logistical support to the Task Force and its committees.

(a) **Voting members.** The Board of Supervisors shall appoint fifteen (15) voting members representing the categories stated bellow. Each of the voting members shall be a resident of San Francisco or shall have his/her principal place of employment located within San Francisco or shall be a service provider to residents of San Francisco.

Voting members of the Asthma Task Force shall be appointed for a term of two (2) years, subject to the expiration of the Task Force as provided in Section 19A.23. In the event a vacancy occurs, the Board of Supervisors shall appoint a successor to complete the remainder of that term. Members of the Asthma Task Force shall serve without compensation or reimbursement for expenses.

The Board of Supervisors shall appoint the voting members of the Task Force from the following categories:

- (1) **Seats 1 & 2:** Two (2) representatives of community-based organizations that provide community-based research or advocacy related to asthma issues in San Francisco;
- (2) **Seat 3:** One (1) representative of child-care coordinating/advocacy organizations;

(3) **Seats 4, 5 & 6:** Three (3) individuals who are either persons with asthma, the parent of a child with asthma, or an asthma patient advocate;

(4) **Seat 7:** One (1) representative of the Department of Public Health;

(5) **Seats 8 & 9:** Two (2) representatives of environmental health/justice organizations;

(6) **Seats 10 & 11:** Two (2) representatives of hospital associations, health care provider institutions, or MediCal Managed Care Insurers;

(7) **Seats 12 & 13:** Two (2) representatives of lung health/asthma-specific organizations; and,

(8) **Seats 14 & 15:** Two (2) individuals who represent health care professions working with asthmatics;

(b) **Non-voting members.** In addition to the voting members, the Board of Supervisors shall appoint one non-voting member to represent property interests, and one non-voting member to represent tenant interests, as these issues come forward on the Asthma Task Force agenda. In addition, one non-voting member shall be appointed to the Task Force by the head of each of the following San Francisco departments/agencies: Department of Human Services; Department of Children, Youth and Families; Department of Building Inspection; Department of the Environment; Fire Department, Emergency Medical Services Division; Planning Department; the San Francisco Housing Authority; and the San Francisco Unified School District.

Each of the following federal agencies may designate a representative to join the Task Force as a non-voting member: U.S. Environmental Protection Agency and U.S. Housing and Urban Development. (Added by Ord. 72-01, File No. 002065, App. 5/18/2001; Ord. 58-06, File No. 051962, App. 3/30/2006)

SEC. 19A.21. PURPOSE OF TASK FORCE.

The purposes of the Task Force are to recommend to the Board of Supervisors legislative

action and citywide strategies that would ensure the highest standard of asthma management and prevention services for all residents in the City and County of San Francisco, and to provide general advice and assistance to the Board of Supervisors with regard to funding priorities, legislative action, and city policies for the prevention and management of asthma in the City and County of San Francisco.

To accomplish these purposes, the Asthma Task Force shall prepare a written, comprehensive, and coordinated strategic plan to manage and prevent asthma in San Francisco. This plan will be derived from information gathered and reviewed and input from a broad-base of individuals and organizations that affect, and are affected by, asthma in the City and County of San Francisco. This strategic plan, and recommendations for its implementation, shall be submitted to the Health Commission and to the Board of Supervisors within twelve months after the first meeting of the Asthma Task Force. The Health Commission may contribute to the plan's findings and recommendations to the Board. The Board of Supervisors may adopt legislation to support the plan.

Thereafter, the Task Force shall submit status reports on progress toward implementing the plan recommendations and meeting the plan's goals to the Board bi-annually.

In creating the strategic plan and the subsequent status reports, the Asthma Task Force shall hold meetings and hearings when appropriate to gather information and input from residents, property owners, health care providers, the school district and the general public. In addition, the Asthma Task Force shall gather and review existing information on the prevalence, management and prevention of asthma in the City and County of San Francisco. Such information may include, but is not limited to:

1. The prevalence of asthma and indicators of the burden of the disease, including data on geographic, racial, age, income and gender differences within the population;
2. Access to appropriate asthma care and preventative services, including potential barriers and gaps in services;

3. Indoor and outdoor environmental risks that can worsen and potentially contribute to the onset of asthma. Indoor environments include, but are not limited to homes, schools, child care sites, and the workplace.

4. Asthma management and prevention best practices, such as the National Institutes of Health's asthma clinical guidelines, and the extent of their utilization by providers;

5. Access to asthma-related educational opportunities for residents that are community-based and culturally/linguistically appropriate;

6. Community organizing and community-based capacity building activities that promote asthma management and prevention in local communities;

7. Level of public awareness of asthma as a serious public health issue and effective approaches to increase the level of awareness;

8. Policies that impact asthma and its management at the local, state and national levels, such as school district policies, housing regulations, and air quality standards; and

9. Research on the potential causes, aggravators, and treatments of asthma. (Added by Ord. 72-01, File No. 002065, App. 5/18/2001)

SEC. 19A.22. CONDUCT OF BUSINESS.

At the initial meeting of the Task Force, and yearly thereafter, the Task Force members may select such officers as the Task Force deems necessary. The Task Force shall establish rules and regulations for its organization and procedures and shall meet when necessary as determined by the Task Force. The Task Force shall be governed by the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). (Added by Ord. 72-01, File No. 002065, App. 5/18/2001)

SEC. 19A.23. SUNSET PROVISION.

The Asthma Task Force shall submit a recommendation to the Board of Supervisors two years after the passage of this ordinance regarding whether the Asthma Task Force should continue in effect. Unless this Article is reautho-

rized by the Board by resolution prior to June 30, 2008, this Article shall expire. (Added by Ord. 72-01, File No. 002065, App. 5/18/2001; Ord. 58-06, File No. 051962, App. 3/30/2006)

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CHAPTER 20: SOCIAL SERVICES

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ARTICLE I: IN GENERAL

- Sec. 20.1. Designation of Department of Human Services as County Department for the Administration of Public Social Services.
- Sec. 20.8. Dependent Children—Responsibility of Care Conferred on Department of Human Services Exception as to Juvenile Court; Delegation of Duties of Probation Officer Concerning Dependent Children to Department of Human Services.
- Sec. 20.30. Fingerprint Imaging of Human Services Clients.
- Sec. 20.31. Disposition of Case Histories after Three Years.

SEC. 20.1. DESIGNATION OF DEPARTMENT OF HUMAN SERVICES AS COUNTY DEPARTMENT FOR THE ADMINISTRATION OF PUBLIC SOCIAL SERVICES.

Pursuant to Section 200 et seq. of the Welfare and Institutions Code of the State, the Department of Human Services, established by Section 3.570 of the Charter, is hereby designated as the county department which shall be the county agency for the administration of public social services and to promote public understanding of the public social services provided under the Welfare and Institutions Code of the State and the problems with which they deal. (Amended by Ord. 185-64, App. 7/1/64; amended by Ord. 339-99, File No. 992045, App. 12/30/99)

SEC. 20.8. DEPENDENT CHILDREN—RESPONSIBILITY OF CARE CONFERRED ON DEPARTMENT OF HUMAN SERVICES EXCEPTION AS TO JUVENILE COURT; DELEGATION OF DUTIES OF PROBATION OFFICER CONCERNING DEPENDENT CHILDREN TO DEPARTMENT OF HUMAN SERVICES.

In addition to the powers and authority now conferred on the Department of Human Services by law or by ordinance, the Board of Supervisors does hereby confer on and delegate to the Department of Human Services the following duties and functions:

(a) The right and responsibility of securing or providing for the care of dependent children in danger of becoming dependent, neglected or delinquent in need of such services; provided, that nothing herein is to be construed to prevent the Juvenile Court from exercising its jurisdiction in any cases requiring such action; and

(b) All of the duties of the probation officer concerning dependent children described by Section 300 of the Welfare and Institutions Code to the extent such duties are delegable pursuant to Section 272 of the Welfare and Institutions Code. (Amended by Ord. 269-81, App. 5/21/81; amended by Ord. 339-99, File No. 992045, App. 12/30/99)

SEC. 20.30. FINGERPRINT IMAGING OF HUMAN SERVICES CLIENTS.

The Department of Human Services shall not require biometric imaging of clients in order to access services, unless required by State, Federal, or grant programs, or those expressly authorized by voter initiative. (Added by Ord. 200-05, File No. 051137, App. 7/29/2005)

SEC. 20.31. DISPOSITION OF CASE HISTORIES AFTER THREE YEARS.

The Social Services Department is hereby authorized and empowered to destroy or dispose

of the case history, or any part thereof, of any recipient of public assistance who has not received such assistance from the City and County of San Francisco for a period of three years prior to such destruction or disposition; provided, however, that no case history containing an agreement to reimburse for moneys expended or aid granted or given or in which welfare fraud is suspected shall be destroyed or disposed of as long as there is a possibility of recovery of funds, in whole or in part, thereunder. (Amended by Ord. 312-85, App. 6/20/85)

ARTICLE II: PRESERVATION OF EMERGENCY NATURE OF SHELTER; PREVENTION OF LOSS OF SHELTER BED BASED SOLELY ON INCOME; PROHIBITION AGAINST PRIORITIZATION OR SET-ASIDES OF SHELTER BEDS BASED SOLELY ON INCOME

- Sec. 20.40. Findings.
- Sec. 20.41. Definitions.
- Sec. 20.42. Preservation of Emergency Nature of Shelter.
- Sec. 20.43. No Displacement Based on Income.
- Sec. 20.44. Limitation of Liability.
- Sec. 20.45. Severability.

SEC. 20.40. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) Due to the shortage of affordable housing in San Francisco, many people suffer from a lack of permanent housing and seek emergency shelter services on a temporary basis; and

(b) Emergency shelter services in San Francisco are a limited resource and should be preserved for individuals that lack permanent housing and who currently face a housing crisis; and

(c) Shelter services provided by the City should not be used as a long-term or permanent solution to homelessness. (Added by Ord. 198-03, File No. 030737, App. 8/1/2003)

SEC. 20.41. DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply to the terms used herein.

(a) "Shelter" or "Shelter services" means any shelter provided by the City on City owned or leased property or through a contractual arrangement that offers temporary overnight sleeping space on a short-term basis.

(b) "Emergency" means an immediate and urgent need for assistance or relief or a time of crisis that requires immediate action.

(c) "Entities that refer individuals to shelter" means any government agency or community based organization that contracts with the

City to provide shelter services, including but not limited to non-profit organizations and religious institutions, that refer individuals for emergency shelter or shelter services.

(d) For purposes of the requirements of Article II, Sections 20.40 through 20.45 only, "income" shall include benefits received under government entitlement or assistance programs. (Added by Ord. 198-03, File No. 030737, App. 8/1/2003)

SEC. 20.42. PRESERVATION OF EMERGENCY NATURE OF SHELTER.

Individuals that access the City's shelters and entities that refer individuals to shelter shall only utilize the shelter system in emergency situations and shall preserve shelter beds for individuals that face an immediate and urgent shelter need, thereby preserving the emergency nature of the shelter system. (Added by Ord. 198-03, File No. 030737, App. 8/1/2003)

SEC. 20.43. NO DISPLACEMENT BASED ON INCOME.

Under this Chapter, there shall be no displacement of any individual using an emergency shelter bed based on that individual's lack of or source of income, nor shall there be any prioritization or set asides of emergency shelter beds based on income that would result in any individual seeking an emergency shelter bed from being unable to obtain such a bed, except for the duration of presumptive eligibility for CAAP recipients. (Added by Ord. 198-03, File No. 030737, App. 8/1/2003)

SEC. 20.44. LIMITATION OF LIABILITY.

By adopting this Article, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and

employees, an obligation for breach of which it is liable in money damages to any person who claims that such a breach proximately caused injury. (Added by Ord. 198-03, File No. 030737, App. 8/1/2003)

SEC. 20.45. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Added by Ord. 198-03, File No. 030737, App. 8/1/2003)

ARTICLE III: PARTICIPATION IN THE SUPPORTIVE TRANSITIONAL EMANCIPATION PROGRAM (STEP)

- Sec. 20.46. Findings.
- Sec. 20.47. Definitions.
- Sec. 20.48. Participation in the "STEP" Program.
- Sec. 20.48A. Transitional Independent Living Plan Requirement.
- Sec. 20.49. Notification and Funding Requirements.

SEC. 20.46. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) Foster youth are a vulnerable population at risk of homelessness, indigence, welfare dependency, incarceration and other adverse outcomes if they exit foster care without the proper skills to become self-sufficient; and

(b) Many foster youth who exit from the foster care system cannot depend on their family for ongoing financial support while they pursue post-secondary education or career development; and

(c) When many foster youth exit the foster care system, their primary source of financial support, AFDC-Foster Care payments, terminates at 18 years of age, diminishing their resources for self-support; and

(d) Some foster youth cannot successfully complete education or training programs due to trauma suffered while in the care of their parents, and possibly from multiple placements while in the foster care system. (Added by Ord. 3-04, File No. 031242, App. 1/16/2004)

SEC. 20.47. DEFINITIONS.

For the purposes of this Article only, the following definitions shall apply to the terms used herein.

(a) "Supportive Transitional Emancipation Program" (STEP) means the program codified in section 11403.1 of the Welfare and Institutions

Code in which eligible foster youth receive ongoing financial support up to 21 years of age while participating in an educational or training program, or any activity consistent with their transitional independent living plan.

(b) "Eligible foster youth" means a person who meets all of the following eligibility criteria:

1. the person was in foster care and emancipated upon reaching the age limitations under Welfare and Institutions Code section 11401, or received aid from the Kin-GAP program under Welfare and Institutions Code section 11360, and emancipated upon reaching the age limitations under Welfare and Institutions Code section 11363;

2. the person is participating in an educational or training program, or any activity consistent with his or her transitional independent living plan;

3. the person is under 21 years of age; and

4. the person has emancipated from a county that is participating in the STEP program. (Added by Ord. 3-04, File No. 031242, App. 1/16/2004)

SEC. 20.48. PARTICIPATION IN THE "STEP" PROGRAM.

The City and County of San Francisco hereby elects to participate in the STEP program, pursuant to section 11403.1 of the Welfare and Institutions Code, and shall meet the funding ratios specified in that section. (Added by Ord. 3-04, File No. 031242, App. 1/16/2004)

SEC. 20.48A. TRANSITIONAL INDEPENDENT LIVING PLAN REQUIREMENT.

Aid under this section shall be provided pursuant to a transitional independent living plan agreed upon by both the eligible foster youth and either the Department of Human Services, the Juvenile Probation Department, or an independent living program coordinator or supervisor.

The transitional independent living plan shall be reviewed annually, and shall meet the requirements under Welfare and Institutions Code section 11403.1(c). (Added by Ord. 3-04, File No. 031242, App. 1/16/2004)

SEC. 20.49. NOTIFICATION AND FUNDING REQUIREMENTS.

The San Francisco Department of Human Services shall notify all foster youth in its jurisdiction, including those foster youth receiving Kin-GAP, ages 16—19 years old, inclusive, of the existence of the STEP program. In addition, the Department of Human Services shall seek any federal funds available for implementing the STEP program, and shall seek any waiver from the Secretary of the United States Department of Health and Human Services that is necessary to implement the STEP program. (Added by Ord. 3-04, File No. 031242, App. 1/16/2004)

ARTICLE IV: DELINQUENCY PREVENTION COMMISSION

Sec. 20.50. Delinquency Prevention Commission; Establishment; Composition; Purpose.

Sec. 20.51. Members' Appointment; Terms; Expenses; Vacancies.

Sec. 20.52. Funding.

Editor's Note:

On November 4, 2003, the electorate adopted Proposition I, which designated new provisions as Chapter 20, Article IV. Because Article IV already existed, the editor has codified Proposition I as Chapter 20, Article V, Sections 20.53-100 through 20.53-107.

SEC. 20.50. DELINQUENCY PREVENTION COMMISSION; ESTABLISHMENT; COMPOSITION; PURPOSE.

Pursuant to the provisions of Section 233 of the Welfare and Institutions Code of the State of California, there is hereby established a Delinquency Prevention Commission ("Commission") composed of 11 citizens, to coordinate the work of those governmental and nongovernmental organizations engaged in activities designed to prevent juvenile delinquency within the City and County of San Francisco. Each individual Supervisor on the Board of Supervisors shall appoint one commissioner to the Commission through the Rules Committee.

The Commission is to review and make recommendations to the Board of Supervisors ("Board") on possible legislative and budgetary actions regarding: (1) the coordination of City agencies and community-based organizations aimed at the prevention of juvenile delinquency; (2) the allocation of City, state and federal funding for the prevention of juvenile delinquency; (3) programmatic changes to improve the cost-effectiveness and quality of care programs and services; and (4) any other matters pertaining to the prevention of juvenile delinquency referred to it by the Board. (Amended by Ord. 177-73, App. 5/3/73; Ord. 232-01, File No. 011450, App. 12/7/2001)

SEC. 20.51. MEMBERS' APPOINTMENT; TERMS; EXPENSES; VACANCIES.

Members of the Delinquency Prevention Commission shall be appointed by the Board of Supervisors, through the Rules Committee, to serve a term of four years, and they shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties. The Commission shall have at least five members who have advanced degrees or at least five-years experience in: (1) law enforcement or criminal justice, (2) social services, (3) mental health, (4) education, and (5) physical health, respectively. At least two of the remaining members of the Commission shall be persons between the ages of 14 and 21 years of age. Upon a vacancy occurring in the membership of the Commission and upon the expiration in the term of office of any member a successor shall be appointed by the Board of Supervisors. When a vacancy occurs for any reason other than the expiration of a term of office, the appointee to fill such vacancy shall hold office for the unexpired term of his or her predecessor. (Amended by Ord. 114-75, App. 4/4/75; Ord. 14-00, File No. 992232, App. 2/11/2000; Ord. 232-01, File No. 011450, App. 12/7/2001)

SEC. 20.52. FUNDING.

The Department of Children, Youth and Their Families shall provide staff, administrative support, and other services to the Commission as needed. The Board of Supervisors may, subject to the budget and fiscal provisions of the Charter, provide funds to pay for such staff personnel services and facilities as may be reasonably necessary to enable the Delinquency Prevention Commission to exercise its powers and perform its duties under the Welfare and Institutions Code.

Nothing in this provision shall prevent the Commission from receiving and expending funds from other governmental and nongovernmental sources to assist the Commission in carrying out

specific projects designed to accomplish its objectives. (Amended by Ord. 407-76, App. 10/8/76; Ord. 232-01, File No. 011450, App. 12/7/2001)

ARTICLE V: CHILD CARE FOR LOW INCOME FAMILIES

- Sec. 20.53-100. Findings.
- Sec. 20.53-101. Definitions.
- Sec. 20.53-102. Smart Start for San Francisco Kids.
- Sec. 20.53-103. Smart Start for San Francisco Kids Fund.
- Sec. 20.53-104. Promulgation of Regulations.
- Sec. 20.53-105. Evaluation.
- Sec. 20.53-106. General Welfare.
- Sec. 20.53-107. Severability.

Editor's Note:

This article, as adopted by the electorate on November 4, 2003, was designated Chapter 20, Article IV, Sections 20.100 through 20.107. Because that article and those section numbers were already occupied by other legislation, the editor has designated these provisions as Article III, Sections 20.53-100 through 20.53-107.

SEC. 20.46-100. FINDINGS.

The people of the City and County of San Francisco hereby find and declare the following:

(a) California subsidizes early childhood education for children whose families earn up to 75 percent of the State Median Income, but state funding limitations allow only an estimated 50 to 60 percent of eligible San Francisco families actually to receive the subsidy; and

(b) Children who attend high quality early education programs demonstrate higher rates of high school graduation, higher incomes as adults, and lower rates of arrest, dropout, teen pregnancy, and welfare dependence; and

(c) Every \$1 invested in high quality early childhood education saves approximately \$7 later in remedial education, welfare, and incarceration; and

(d) California is moving toward providing universal preschool through the First Five California Commission, established by the cigarette tax approved by the electorate in 1998, and has made available \$100 million to increase access to

pre-school by funding demonstration projects, expanding the pre-school teacher workforce, and matching funds for counties that establish programs to raise levels of pre-school attendance; and

(e) An estimated 1,650 3 to 5 year old children in San Francisco are not receiving the state early education subsidies for which they are eligible, and these children of working parents need access to full-day, full-year care to help these families stay in San Francisco; and

(f) San Francisco has a strong, existing network of licensed early childhood education and family child care home providers to help young children become "school ready"; and

(g) San Francisco has an existing infrastructure through the Department of Children, Youth and Families and its subcontractors to administer subsidies through a voucher system for eligible families, so that expanding San Francisco children's access to early childhood education can be done without creating new rules and regulations for licensing and eligibility; and

(h) An expanded system of early childhood education in San Francisco could qualify for matching funds from the First Five California Commission; and

(i) Portable subsidies linked to the consumer rather than the agency allow parents to choose culturally, linguistically appropriate child care providers close to work or home; and

(j) Annual reports from administrators to the Board of Supervisors and the Mayor will provide program evaluation and accountability. (Added by Proposition I, 11/4/2003)

SEC. 20.53-101. DEFINITIONS.

For the purposes of this Article only, the following definitions shall apply to the terms used herein:

(a) "Licensed Early Care and Education" shall mean care and educational services provided to children prior to enrollment in kinder-

garten, including those provided by family child care providers, as determined by the Director of the lead agency.

(b) "Eligible Working Family" shall mean a family that meets all of the following eligibility criteria:

1. The family has at least one child between the ages of 3 and 5.
2. The family resides in the City and County of San Francisco.
3. The family's income is at 75% or below of the California median income.
4. The family applies for any state subsidy for which they are eligible but does not currently receive a subsidy from the State of California pursuant to Education Code Section 8263.1.

(c) "Ages 3 to 5" shall mean any child who is at least 3 years of age and determined to be too young for kindergarten as determined by the San Francisco Unified School District.

(d) "Subsidy" shall mean the difference between the actual cost of the service and the amount allowed for by the most current "Regional Market Rate Survey of California Child Care Providers." Families will pay a family fee based on the State family fee schedule. (Added by Proposition I, 11/4/2003)

SEC. 20.53-102. SMART START FOR SAN FRANCISCO KIDS.

There is hereby established a "Smart Start for San Francisco Kids" program to be administered by a lead agency designated by the Mayor within 90 days from enactment of this measure. The program shall provide a portable subsidy for licensed early care and education to any eligible working family for the purposes of providing these services to any child ages 3 to 5. Nothing in this section is intended to preclude the Mayor and the Board of Supervisors from making subsidies for licensed early care and education available to children between the ages of 0 and 2. (Added by Proposition I, 11/4/2003)

SEC. 20.53-103. SMART START FOR SAN FRANCISCO KIDS FUND.

There is hereby established a fund to be known as "Smart Start for San Francisco Kids Fund," which shall contain all appropriations for the implementation of this ordinance. This fund shall be a Category 8 fund, meaning that funds shall automatically be appropriated, interest shall accumulate and that any fund balance shall carry forward from year to year. The fund shall contain all monies appropriated from any lawful source for this purpose pursuant to Article IX of the City Charter, except that no funds provided by the Children's Fund (Charter Section 16.108(c)) may be used in the "Smart Start for San Francisco Kids Fund." (Added by Proposition I, 11/4/2003)

SEC. 20.53-104. PROMULGATION OF REGULATIONS.

The Director of the lead agency shall have the authority to promulgate regulations in collaboration with the Department of Children, Youth and Families, the Human Services Commission, the Children and Families Commission, the Child Care Planning and Advisory Council and any interested community organizations. Such regulations shall require approval by the Children and Families Commission. On an annual basis, the director of the lead agency shall provide a report to the Mayor and the Board of Supervisors. (Added by Proposition I, 11/4/2003)

SEC. 20.53-105. EVALUATION.

Within two years from the effective date of this initiative, the Controller shall audit and evaluate the efficacy of this program. The Controller shall also advise on additional steps to expand early childhood education opportunities. (Added by Proposition I, 11/4/2003)

SEC. 20.53-106. GENERAL WELFARE.

In undertaking this program, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers, commissions, and employees, an obligation for breach of which it is liable in money damages to

any person who claims that such breach proximately caused injury. (Added by Proposition I, 11/4/2003)

SEC. 20.53-107. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this initiative or any part thereof is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. The people hereby declare that they would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more section, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. (Added by Proposition I, 11/4/2003)

San Francisco - Administrative Code

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ARTICLE VI: [RESERVED]

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ARTICLE VII: GENERAL ASSISTANCE PROGRAM

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SEC. 20.55. TITLE.

This Article shall be known as the "General Assistance Program of the City and County of San Francisco." (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.55.1. AUTHORITY AND MANDATE.

(a) This program is established pursuant to Chapter 1, Part 5, of the Welfare and Institutions Code of the State of California, commencing with Section 17000.

(b) Any amendments to the above authority, adopted subsequent to the effective date of this Article, shall not invalidate any provisions of this Article. Any amendments to the Welfare and Institutions Code that may be inconsistent with this Article shall govern.

(c) The provisions of this Article shall govern in relation to all other ordinances of the City and County of San Francisco and rules and regulations pursuant thereto. In the event of any inconsistency or conflict between the provisions of this Article and other provisions of the Administrative Code, the most specific shall prevail. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.55.2. DEFINITIONS.

For the purposes of this ordinance:

(a) The term "applicant" is a person who is in the process of applying for benefits under the General Assistance Program.

(b) The term "CALM" means the Cash Assistance Linked to Medi-Cal Program as set forth under Article X of this Chapter.

(c) The term "CalWORKs" means the California Work Opportunity and Responsibility to Kids as defined Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or any successor program.

(d) The term "decrease" means any reduction in a recipient's current cash grant amount, excluding the supplemental rent payment.

(e) The term "denial" means a determination, based on a General Assistance application, that the applicant is not eligible for aid.

(f) The term "Department" means the Department of Human Services of the City and County of San Francisco.

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(g) The term "discontinuance" means the termination of a person's entitlement to aid.

(h) The term "EDD" means the State Employment Development Department.

(i) The term "electronic benefit transfer" means a method of transferring benefits through a centralized computer system so that an applicant/participant may obtain his or her benefits at facilities such as automated teller machines (ATM) and point-of-sale (POS) terminals using an access device such as a magnetic stripe plastic card. "Electronic benefit transfer" includes direct deposits.

(j) The term "Executive Director" means the Executive Director of the Department of Human Services of the City and County of San Francisco.

(k) The term "FSET" means Food Stamps Employment and Training.

(l) The term "GATES" means General Assistance Training and Employment Services.

(m) The word "may" means the provision is permissive.

(n) The term "MIA" means Medically Indigent Adult or Medically Needy Individual, as defined in Welfare and Institutions Code Section 14005.7.

(o) "MNO" means "Medically Needy Only" benefits under the Medi-Cal program as defined in Welfare and Institutions Code Section 14000 et seq.

(p) "PAES" means the Personal Assisted Employment Services Program as set forth under Article IX of this Chapter.

(q) The term "recipient" is a person who is receiving General Assistance.

(r) The term "recoupment" means the collection of past overpayments under the General Assistance Program by deducting from current grants not more than 10 percent of the current grant amount absent an administrative determination of recipient fraud and not more than 40 percent with an administrative determination of recipient fraud and an administrative evaluation of the recipient's current ability to make repayments.

(s) "Resident of a state or private institution" shall mean that the applicant/recipient is staying in a facility that provides housing and three meals a day.

(t) The word "shall" means the provision is mandatory.

(u) The term "SSI/SSP" means Supplemental Security Income/State Supplementary Program for Aged, Blind, and Disabled as defined in Welfare and Institutions Code Section 12000, et seq.

(v) "SSIP" means the Supplemental Security Income Pending Program as set forth under Article XI of this Chapter.

(w) "Supplemental rent payment" means a payment of an applicant/recipient's verified rent where such rent exceeds the maximum monthly grant for which an individual is eligible.

(x) The term "TANF" means Temporary Assistance to Needy Families as defined in Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(y) The term "withholding" means the retention of aid payments. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.55.3. USAGE OF PRONOUN.

The use of the masculine pronoun shall refer to male or female. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.55.4. PURPOSES AND PRINCIPLES.

(a) This Article is enacted to establish rules and requirements for the administration of aid to the indigent and dependent poor of the City and County of San Francisco and to adopt standards and conditions for such aid.

(b) The purpose of General Assistance is to provide short-term financial or in-kind assistance and other services to indigent residents of the City and County who are unable to support themselves and have exhausted their own means of support; and are not residents of state or

private institutions. General Assistance is intended to enable and encourage persons aided to:

- (1) Find employment if employable;
- (2) Receive support from other federal or State sources; and to
- (3) Reduce or eliminate the conditions that have led to indigency and dependency.

(c) The responsibilities of the recipients under this program include the following:

(1) All applicants and/or recipients are to attend the introductory General Assistance orientation program, unless medically unable to do so;

(2) All employable applicants and/or recipients shall also attend the General Assistance evaluation program, unless medically unable to do so.

(3) Employable recipients are required, as determined by the Department of Human Services, to seek employment, to participate in Department-approved job counseling, vocational rehabilitation, drug or alcohol treatment programs; and to perform such volunteer or other work assignments as are made available through the Department; and

(4) Unemployable recipients are required to seek other means of federal or State support, where available, including, but not limited to, support available under State and federal programs such as SSI/SSP, and to seek treatment where available to alleviate those conditions leading to their dependency.

(d) Assistance is to be administered in a manner which is consistent with and will help achieve basic General Assistance Program purposes and which respects individual privacy and personal dignity. The following policies and principles govern the public social services:

(1) General Assistance is to be administered promptly and humanely, without discrimination on account of race, sex, sexual orientation, religion or political affiliation.

(2) General Assistance is to be so administered as to encourage self-respect, self-reliance and the desire to be a good citizen, useful to society.

(3) General Assistance is to be administered with courtesy, consideration and respect and without attempting to elicit any unnecessary information.

(4) Duties should be performed in such a manner as to secure for every applicant or recipient the amount of aid to which he or she is entitled under the law.

(5) Duties should be performed in a manner that usefully assists all employable recipients in seeking employment and all unemployable recipients in obtaining other appropriate public benefits.

(6) There is to be no question, inquiry or recommendation relating to the political or religious opinions or affiliations of any applicant or recipient.

(7) General Assistance is to be administered in the most cost-effective manner possible. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.55.5. POLICY AND ADMINISTRATION.

(a) The Board of Supervisors has authority for establishing the policies under which the General Assistance Program is administered, and any change or exceptions, except as otherwise provided, may be made only upon its authorization.

(b) The Department of Human Services shall administer all public aid and relief in the City and County to indigent persons of said City and County. Said aid and relief shall be administered in accordance with standards of aid and care for such persons as adopted herein by the Board of Supervisors. The Executive Director of the Department of Human Services shall establish rules and regulations for the proper administration of the General Assistance Program.

(c) In actual emergencies, the Executive Director of the Department of Human Services may make exceptions to policies pending action by the Board of Supervisors. Such action shall be reported to the Board of Supervisors within five working days. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.55.6. SEVERABILITY.

(a) If any section, subsection, paragraph, sentence, clause or phrase of this Article, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, or other competent agency, such decision shall not affect the validity or effectiveness of the remaining portions of this Article or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.

(b) If the application of any provision or provisions of this Article to any person, class of persons, property or circumstances is found to be unconstitutional or invalid or ineffective in whole or in part by any court of competent jurisdiction, or other competent agency, the effect of such decision shall be limited to the person, class of persons, property or circumstances immediately involved in the controversy, and the application of any such provision to other persons, properties and circumstances shall not be affected.

(c) This Section shall apply to this Article as it now exists and as it may exist in the future, including all modifications thereof and additions and amendments thereto. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/12/98)

SEC. 20.56. ELIGIBILITY FOR AID; INDIGENT ADULT DEFINED.

Aid, services, or both shall be granted under the provisions of this Article and subject to the regulations of the Department to (1) any indigent person 18 years of age or over, (2) or any person under the age of 18 who is legally married or who has been divorced, but not one whose marriage has been annulled or (3) to a family as set forth in Section 20.57 of this Article. However, applicants who are receiving assistance under PAES, CALM or SSIP shall not be granted aid or services under this Article. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/12/98)

SEC. 20.56.1. PRORATION OF SALARY OF FULL-TIME CERTIFIED EMPLOYEE OF SCHOOL DISTRICT, UNIVERSITIES, COMMUNITY COLLEGES OVER A TWELVE-MONTH PERIOD.

The salary of a full-time certified employee of a school district, private school, community college, or university shall be prorated over a 12-month period for the purpose of determining eligibility for aid under this Article. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/12/98)

SEC. 20.56.2. PRORATION OF INCOME OVER CONTRACT PERIOD.

The income of any person under a contract of employment on an annual basis who works and receives income from such contract in fewer than 12 months, but more than eight months, shall be prorated over the period of the contract for the purposes of this Article. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/12/98)

SEC. 20.56.3. PROPRIETOR OF BUSINESS INELIGIBLE.

Proprietors of businesses who employ other workers are ineligible for aid under this Article. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/12/98)

SEC. 20.56.4. PRORATION OF INCOME OF SELF-EMPLOYED AND FREELANCE WORKER OVER A TWELVE-MONTH PERIOD.

The income of any self-employed person or freelance worker shall be prorated over a 12-month period for the purpose of determining eligibility for aid under this Article. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/12/98)

SEC. 20.56.5. REBUTTABLE PRESUMPTION OF INELIGIBILITY—STUDENTS.

Status as a student shall create a rebuttable presumption that such person is unavailable for, or unable to accept, offers of employment. The presumption may be rebutted by satisfactory

evidence being presented to the Department of Human Services of the student's opportunity and intent to seek employment on a full-time basis. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/12/98)

SEC. 20.56.6. REBUTTABLE PRESUMPTION OF INELIGIBILITY—CURRENT INCOME OR EXPENSES.

Verified paid income or expenses during a current month of eligibility and/or application which exceed the otherwise eligible applicant/recipient's total monthly income and/or assets shall create a rebuttable presumption of ineligibility for aid. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/12/98)

SEC. 20.56.7. LABOR DISPUTE—EFFECT OF.

Unemployment due to a bona fide strike, lockout or other labor dispute in and of itself shall have no effect on eligibility, provided the applicant:

- (a) Meets all other eligibility requirements;
- (b) Registers for employment with EDD;
- (c) Actively seeks and accepts offers of employment; and
- (d) Is not on picket line duty during normal working hours. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.56.8. RESIDENCY REQUIREMENT.

(a) Residency in the City and County of San Francisco for 15 continuous days, prior to the time of application, is a requirement of eligibility for General Assistance. No aid shall be paid until such residency is verified, except as provided in Section 20.57.4. Residency in the City and County of San Francisco is established by physical presence and intent to reside in the City and County of San Francisco which is satisfactorily substantiated by the applicant or recipient.

(b) Eligibility for General Assistance will terminate immediately upon abandonment of residency in the City and County of San Francisco. (Amended by Ord. 212-80, App. 5/16/80; amended by Proposition V, 11/2/93; Ord. 152-98, App. 5/8/98)

SEC. 20.56.9. ALLOWABLE REAL PROPERTY.

(a) The applicant shall transfer or grant to the City and County of San Francisco any interest which the applicant has in any real property as security for the monies expended for aid. This provision is subject to the limitations set forth in Welfare and Institutions Code Section 17000, et seq.

(b) An applicant or recipient of General Assistance may retain real property used as his or her home, provided that the applicant's or recipient's net monthly housing expense does not exceed the otherwise eligible applicant/recipient's total monthly income and/or assets. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.56.10. ALLOWABLE PERSONAL PROPERTY.

No aid under this Article shall be granted or paid for any person who has not exhausted all assets and resources available to such person, except for those personal properties listed below:

(a) Cash assets, savings and/or checking accounts, the total of which does not exceed the current monthly maximum grant available to a single individual under Section 20.57(a) of this Article. Any combination of these assets that exceeds the monthly maximum grant available to a single individual under Section 20.57(a) of this Article shall be offset against the recipient's grant on a dollar-for-dollar basis. If the applicant is transitioning from PAES, SSIP or CALM and has been participating in the Earned Income and Asset Disregard Program within the three months prior to application for General Assistance, such applicant may retain a total of up to \$2,000 in savings. If the applicant is transitioning from SSI to General Assistance, the applicant may retain a total of up to \$2,000 in savings.

- (b) Personal effects, exclusive of luxury jewelry;
- (c) Household furnishings;
- (d) Tools, trade equipment and fixtures used in the individual's regular trade or work;
- (e) Insurance policies or funds placed in trust for the provision of interment or for funeral expenses to the extent of not more than \$600 per family;
- (f) An interment plot for use by members of the applicant's or recipient's family;
- (g) A vehicle with cash value of less than \$4,650. (Amended by Ord. 271-81, App. 5/21/81; Ord. 125-93, App. 4/30/93; Ord. 419-94, App. 12/23/94; Ord. 152-98, App. 5/8/98)

SEC. 20.56.11. EXEMPT INCOME OR RESOURCES.

For the purpose of this Article:

- (a) Personal property, income or resources shall not include income from relocation payments to individuals receiving aid under this Article being displaced by a redevelopment agency.
- (b) Retirement benefits may be retained upon determination by the Executive Director or his or her designee that the applicant or recipient will be reemployed in the near future and that such employment is contingent upon the retirement fund not being withdrawn.
- (c) SSI/SSP benefits and resources of a member of the General Assistance family shall not be considered as income or resources available to the applicant or recipient.
- (d) Any verified loans made to a recipient or to an applicant in the month of application, or one month immediately prior to application for the purpose of enabling that recipient or applicant to pay his or her rent, or for the purpose of payment of first and last month's rent and any lawful rental deposit, shall not be considered income or resources available to that recipient or applicant.
- (e) Income tax refunds, including the Earned Income Tax Credit (EITC), issued to the applicant or recipient shall not be considered as income or resources available to the applicant or recipient.

(f) Payments made to the applicant or recipient under the Foster Care or FSET/GATES programs shall not be considered as income or resources available to the applicant or recipient.

(g) The portion of any student grants or loans that is paid directly to the educational institution for tuition, and/or fees, and/or books. (Amended by Ord. 212-80, App. 5/16/80; Ord. 1-95, App. 1/13/95; Ord. 152-98, App. 5/8/98)

SEC. 20.56.12. REIMBURSEMENT AGREEMENT.

Each applicant or recipient shall sign an Interim Assistance Reimbursement Agreement, in the event that the applicant/recipient is subsequently awarded SSI. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.56.13. PHOTO IDENTIFICATION.

(a) Each applicant shall present proof of identity and a verifiable social security number. Except as otherwise provided in Subsection (b) only the following photo identification shall be accepted:

- (1) California Department of Motor Vehicles Driver's License;
- (2) California Department of Motor Vehicles Identification Card;
- (3) Current United States Passport provided that such Passport contains a photo taken of applicant/recipient when he or she was at least 18 years of age;
- (4) Current Immigration and Naturalization identification, provided that such identification contains a photo which was taken of the applicant/recipient when he or she was at least 18 years of age and was taken within 10 years prior to the date of application of applicant/recipient.

(b) In the event that an applicant cannot produce a California Department of Motor Vehicles photo identification card, the Department may assist applicants and recipients once in obtaining California Department of Motor Vehicles photo identification. Failure to cooperate in obtaining a Department of Motor Vehicles

identification or other permanently acceptable identification as determined by the Executive Director, after 90 days on aid under any County-funded indigent assistance program, shall be grounds for discontinuing aid. Recipients discontinued on these grounds are not eligible to receive aid under any County-funded indigent assistance program until they have valid identification pursuant to Department Regulations.

(c) In addition, the Department may require applicants and recipients to obtain and present Department-issued identification. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.56.14. FINGERPRINT INFORMATION.

For the purpose of preventing multiple aid payments to the same person, the Department may require that applicants and recipients provide fingerprints as a condition of eligibility or continuing eligibility, subject to such procedures and regulations as the Department may adopt. Failure to cooperate with the fingerprint procedures provides grounds for denial or discontinuance of aid.

Such fingerprints are subject to all applicable State and federal laws and regulations regarding the confidentiality of information of applicants for, or recipients of, public benefits. (Added by Proposition V, 11/2/93)

SEC. 20.56.15. EXEMPTION FOR TERMINAL ILLNESS.

Terminally ill applicants with medical verification that such applicant has a remaining life expectancy of six months or less are exempt from:

(a) Providing documentation of legal status in the United States;

(b) The provisions of Section 20.56.10(h) regarding the cash value of a vehicle, provided that the applicant can demonstrate that such vehicle is necessary to transport the applicant to

and from medical treatment, and that he or she is physically and/or mentally unable to use public transportation;

(c) The provisions of Section 20.56.13 regarding the requirement to obtain and present any photo identification.

Such applicants shall meet all other eligibility requirements.

There shall be no time limit to the duration of eligibility for General Assistance authorized under this provision.

The Department of Human Services shall maintain records of the number of individuals granted aid under this provision, and shall provide a report of that number to the Mayor and the Human Services Commission annually. (Added by Ord. 265-94, App. 7/29/94; Ord. 152-98, App. 5/8/98)

SEC. 20.56.16. INELIGIBILITY OF INDIVIDUALS CONVICTED OF A FELONY INVOLVING THE POSSESSION, USE OR DISTRIBUTION OF A CONTROLLED SUBSTANCE.

An individual who is a member of an assistance unit receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 of the California Welfare and Institutions Code (CALWORKS), shall not be eligible for General Assistance under this Article if the individual has been convicted in a State or federal court, after the effective date of this ordinance, including any plea of guilty or nolo contendere, of any offense classified as a felony and that has an element of the possession, use, or distribution of a controlled substance, defined in Section 102(6) of the Controlled Substance Act (21 U.S.C. Sec. 802(6)). (Added by Ord. 152-98, App. 5/8/98)

SEC. 20.56.17. INELIGIBILITY OF FLEEING FELONS.

(a) An individual shall not be eligible for General Assistance under this Article if he or she is either:

(1) Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing,

for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the state of New Jersey, is a high misdemeanor under the laws of that state.

(2) Violating a condition of probation or parole imposed under federal law or the law of any state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct. (Added by Ord. 152-98, App. 5/8/98)

SEC. 20.56.18. INELIGIBILITY OF INDIVIDUALS WHO HAVE REACHED THE SIXTY-MONTH TIME LIMIT FOR RECEIPT OF TANF/CALWORKS AID UNDER STATE LAW.

(a) Any individual who is not eligible for aid under Chapter 2 (commencing with Section 11200) of Part 3 of the California Welfare and Institutions Code as a result of the 60 month limitation specified in Subdivision (b) of Section 11454 of the Welfare and Institutions Code shall not be eligible for General Assistance under this Section until all of the children of the individual on whose behalf aid was received, whether or not currently living in the home with the individual, are 18 years of age or older.

(b) Any individual who is receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 of the Welfare and Institutions Code on behalf of an eligible child, but who is either ineligible for aid or whose needs are not otherwise taken into account in determining the amount of aid to the family pursuant to Section 11450 of the Welfare and Institutions Code due to the imposition of a sanction or penalty, shall not be eligible for aid or assistance under this Article.

(c) This Section shall not apply to any health care benefits provided under this Article. (Added by Ord. 152-98, App. 5/8/98)

SEC. 20.57. COMPUTATION AND PAYMENT OF AID GRANTS; AMOUNTS PAYABLE.

(a) For each eligible individual or for each eligible family of two or more persons who qualify for aid under the General Assistance Program, the maximum monthly amount of aid to which such recipients are entitled is listed below.

MAXIMUM GENERAL ASSISTANCE GRANT AMOUNT	
Single Individual	\$ 320
Number of Eligible Persons in Same Family	
2 Persons.....	\$ 574
3 Persons.....	647
4 Persons.....	771
5 Persons.....	877
6 Persons.....	984
7 Persons.....	1,081
8 Persons.....	1,179
9 Persons.....	1,273
10 Persons	1,367

In the case of more than 10 persons in a family budget unit, an additional \$14 each month shall be paid for each additional person in the family budget unit. For the purpose of this Section, a family is defined as an eligible applicant/recipient and his or her spouse or "domestic partner," as defined under Section 62.2 of the San Francisco Administrative Code, and/or any of the applicant/recipient's children who are under age 18, living with, and applying for General Assistance with, such applicant/recipient, provided that such child(ren) was (were) never eligible for TANF/CalWORKs. For family budget units in which members receive cash payments from more than one federal, State or County assistance program, except for SSI/SSP, the total aid payment shall consist of the sum of each individual's proportionate share of the aid payment for a family budget unit of the same size within each program for which each member is eligible.

Any individual or family receiving aid pursuant to this subsection shall continue to receive the maximum monthly grant for which they

were eligible prior to any reduction in the maximum monthly grant structure enacted by the Board of Supervisors, until that eligible individual or family has applied for and been denied, or has refused to apply for, assistance under the PAES, CALM, or SSIP Programs.

(b) With respect to all applicants, initial aid payments shall be conditional upon completion of the Department orientation program. In addition, with respect to each employable recipient, continuing aid shall be conditioned, at the option of the Department, upon either completion of 20 verifiable job applications per month and/or participation in a Department-approved job counseling, vocational rehabilitation, drug or alcohol treatment or work assignment program. Verifiable job applications or job searches within the meaning of this Section, Section 20.58(c), and Section 20.58.2(b)(5) of this Article, shall include, but not be limited to: (1) sending applications, resumes and cover letters to apply for available positions for which the recipient meets the minimum qualifications, with copies of these documents and the telephone number of the prospective employer provided to the Department of Human Services so they can be verified; and (2) participation by a union member in union hiring hall programs that make use of telephone job searches for currently available positions.

In addition, with respect to each unemployable recipient, continuing aid shall be conditioned upon application for, and pursuit of, SSI/SSP benefits, if eligible, and participation in a Department-approved rehabilitation program. Aid may be withheld, reduced, or discontinued for failure to meet these requirements.

(c) The Maximum General Assistance Grant may include Municipal Railway tokens, in which event the cost of the Municipal Railway tokens to the Department of Human Services shall not be deducted from the Maximum General Assistance Grant Amounts listed above to arrive at the Maximum Cash General Assistance Grant Amount which may be issued by means of in-kind assistance, vouchers, checks, two-party checks or electronic benefit transfers. The Municipal Railway tokens shall be for the sole use of the recipient.

(d) The Maximum General Assistance Grant Amounts listed in Section 20.57 (a) of this ordinance shall be increased by any annual percentage cost of living increase to the Maximum Aid Payment, and according to the same schedule, if such an increase is implemented by the State of California in the TANF/CalWORKs program.

(e) The maximum monthly amount of aid for which an applicant is eligible shall be the Maximum General Assistance Grant Amount prorated as of the eligibility determination date, minus any nonexempt assets and/or nonexempt personal property available to the applicant during that calendar month, and minus the value of any prorated in-kind housing, utilities and/or meals available or provided to the applicant. Rent, retroactive to the first of the month in which eligibility was determined, may be authorized to prevent eviction from existing housing. Applicants who anticipate receiving first-time income from other sources during the month of their application for General Assistance, shall receive the prorated maximum monthly grant amount for which they are eligible until the verified date of anticipated receipt of such other income.

(f) The maximum monthly amount of aid for which a recipient is eligible shall be the Maximum General Assistance Grant Amount, or the amount determined pursuant to Subsection (b) minus any cash received from sources other than General Assistance which is or will be available to the recipient during the month for which aid is paid unless otherwise exempt, minus the fair market value of any nonexempt personal property which is or will be available to the recipient during the month for which aid is paid, and minus the value of any in-kind housing, utilities and/or meals available or provided to the recipient.

(g) No grant shall be issued for less than \$5.

(h) To promote the transition of General Assistance recipients to gainful employment, the Executive Director of the Department of Human Services may establish an Earned Income and Asset Disregard Program for the recipients who are employed. The Earned Income and Asset

Disregard Program shall provide for disregarding a certain amount of gross income which a recipient earns as wages and savings derived therefrom when determining a recipient's General Assistance Program eligibility and grant amount. The total amount of gross income disregarded shall not exceed the sum of the following amounts: (1) all of the first \$200 of recipient gross wage earnings; (2) two-thirds of the next \$150 of recipient gross wage earnings; (3) one-half of the next \$150 of recipient gross wage earnings; (4) one-third of the next \$150 of recipient gross wage earnings; and (5) one-fifth of the next \$150 of recipient gross wage earnings. All recipient gross wage earnings above \$800 shall be offset on a dollar-for-dollar basis against the grant amount to which a recipient would otherwise be entitled. In addition, for recipients participating in this program up to \$2,000 of recipient savings derived from the recipient's gross wage earnings shall be disregarded during the recipient's participation in this program and for up to three months thereafter. Also, if as a result of retrospective budgeting a recipient's total currently available financial resources in a month including his or her adjusted General Assistance grant, wages, and savings are less than the maximum General Assistance grant amount, the recipient shall be eligible for a grant supplement in the form of a rental expense voucher for unpaid rent in that month and up to \$50 in cash so that the recipient's currently available financial resources may total up to the maximum General Assistance grant amount. This grant supplement is available a maximum of three times per year for program participants and is not available to recipients who quit a job without good cause.

Recipient gross wage earnings are defined for purposes of this Section as any income received by the recipient as payment for a recipient's labor. This Section supersedes the provisions of Subsection 20.55.2(r), Section 20.56.6, Subsections 20.56.10 (a) and (b), Subsections 20.57 (e) and (f), and Subsections 20.59.10 (d), (e) and (f) when determining recipient eligibility and when calculating the maximum monthly amount of aid for program participants. All other recipient in-

come and assets shall continue to be offset on a dollar-for-dollar basis when calculating the grant amount to which a recipient is otherwise eligible. For recipients participating in this program, General Assistance eligibility shall be determined on a monthly basis and a recipient's grant amount shall be adjusted for gross wage earnings on the basis of retrospective budgeting in the month following the recipient's receipt of wage income. Verified expenses which exceed the total sum of a participant's grant, wages, and savings in any given month create a rebuttable presumption of ineligibility for aid.

(i) The automatic adjustment provisions of Subsection (d) are hereby suspended for fiscal year 1997-98. Adjustments for subsequent fiscal years made pursuant to this Section shall not include any adjustments for any fiscal year in which the cost of living was suspended. (Amended by Ord. 271-81, App. 5/21/81; Ord. 253-90, App. 6/29/90; Ord. 389-90, App. 12/6/90; Ord. 125-93, App. 4/30/93; Ord. 206-94, App. 5/27/94; Ord. 419-94, App. 12/23/94; Ord. 155-95, App. 5/12/95; Ord. 196-96, App. 5/22/96; Ord. 209-97, App. 5/30/97; Ord. 152-98, App. 5/8/98; Proposition N, 11/5/2002; Ord. 193-03, File No. 030871, App. 7/25/2003)

SEC. 20.57.1. HOUSING.

(a) "Housing" shall mean single occupancy residential hotels, master lease rooms, transitional housing, supportive housing programs, or residential substance abuse and mental health treatment facilities.

(b) There shall be no reduction in the amount of General Assistance for which an applicant or recipient is eligible because he or she shares housing with others who are not members of the applicant's family as defined in Section 20.57(a). All applicants and recipients shall be required to present a verifiable rent receipt. If the applicant or recipient is not the owner or prime lessee of the premises, a verifiable rent receipt signed by the owner or prime lessee may provide evidence of the applicant's or recipient's place of residence and monthly share of housing costs.

(c) When an applicant or recipient obtains rent-free housing, such housing shall be valued according to the Income-in-Kind Values Chart set forth in Title 22 of the California Code of Regulations, Section 50511 (the "Income-in-Kind Chart"), rather than at fair market value. The value of the rent-free housing, which is presumed to include utilities, as determined under the Income-in-Kind Chart, shall be deducted from the maximum monthly grant amount. If the applicant or recipient receives rent-free housing, but pays for utilities, the applicant or recipient must present a verifiable bill for utilities at that address, and a verifiable receipt for payment of any portion of that utility bill.

(d) Verified payments made directly to a housing provider on behalf of an applicant or recipient for the entire amount of the rent and/or utilities, or rent-free housing, or housing received in exchange for work, shall be assigned an in-kind value as specified by the Income-in-Kind Chart, and that value shall be deducted from the maximum monthly grant for which that applicant or recipient is eligible.

(e) Housing, utilities and/or meals provided to applicants and recipients who are unable to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing shall be valued as in-kind housing, utilities and/or meals as specified by the Income-In-kind Chart, and that value shall be deducted from the maximum monthly grant for which that applicant or recipient is eligible.

(f) Nothing in this Section shall be construed as requiring an otherwise eligible applicant or recipient to accept housing in a facility which is either the subject of a pending nuisance abatement proceeding before a duly authorized agency or department of the City and County or before a court of competent jurisdiction, or which theretofore has been found to be a public nuisance pursuant to any provision of any San Francisco Municipal Code by a duly authorized agency or department of the City and County or

by a court of competent jurisdiction and which nuisance has not been abated. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98 Proposition N, 11/5/2002; Ord. 193-03, File No. 030871, App. 7/25/2003)

SEC. 20.57.2. ALTERNATIVE PAYMENT METHODS; DIRECT PAYMENTS TO ROOM AND BOARD FACILITIES PERMITTED.

In addition to the emergency aid provisions of this Article, payment for room, food expense, or both, up to the \$345 per month, may at the recipient's option, be paid directly to any board and/or care facility should the recipient or applicant choose to reside, take his or her meals or have full room and board privileges at such facilities. The Executive Director may initiate such a program or payment arrangement, on either a pilot or continuing basis, by putting into effect the appropriate regulations. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.57.3. BASIC NEEDS; PERSONAL NEEDS.

Personal needs are provided for in the grant standard. No additional allowance for personal needs shall be authorized. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.57.4. SPECIAL ALLOWANCES; TRANSPORTATION OUT OF THE CITY.

(a) The Department of Human Services may provide transportation and maintenance en route to a place out of the City and County where the applicant or recipient will be cared for or his or her interests best served, provided the applicant or recipient, but for fully meeting the residency requirement, is otherwise eligible and voluntarily enters into a signed contractual agreement regarding such transportation with the City and County of San Francisco. Said agreement shall contain a repayment provision permitting recoupment of the amount expended in providing such transportation at a rate not to exceed 10 percent

of each grant amount should the person provided transportation thereafter be provided General Assistance in San Francisco.

(b) Transportation under this Section shall be provided by the least expensive means available. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.57.5. SPECIAL ALLOWANCES; MEDICAL CARE.

To the extent permitted by federal and State law all General Assistance applicants and recipients shall be provided medical benefits through the MIA and MNO programs. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.57.6. SPECIAL ALLOWANCES; BEQUEST FUNDS.

Bequest Funds may be available to General Assistance applicants or recipients. Application for such funds may be made to the Human Services Commission. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.57.6A. SPECIAL ALLOWANCES; INCOME-IN-KIND VALUE EXCEEDS MONTHLY MAXIMUM GRANT.

A special allowance of up to \$59.00 per month shall be made available to any recipient when the income-in-kind value of housing, and/or utilities, and/or meals provided to that recipient exceeds the maximum monthly grant for which that recipient is eligible. If such income-in-kind value does not exceed the maximum monthly grant for which that recipient is eligible, but allows for less than \$59.00 cash per month, that recipient shall receive an amount that, when added to the maximum monthly grant for which that recipient is eligible, equals \$59.00 cash per month. This section shall not affect the collection of overpayments due to fraud, negligent failure to report facts, or administrative error as set forth in this Article. (Added by Proposition N, 11/5/2002; amended by Ord. 193-03, File No. 030871, App. 7/25/2003; Ord. 93-07, File No. 070208, App. 4/27/2007)

SEC. 20.57.7. EMPLOYER WAGE SUBSIDY—GENERAL ASSISTANCE PROGRAM.

(a) **Findings.** The Board of Supervisors in adopting this ordinance finds that providing the authority for the Department of Human Services to establish a wage subsidy program as defined herein will promote the permanent employment of General Assistance recipients.

(b) **Employer Wage Subsidy—Defined.** For the purposes of this Section, "employer wage subsidy" means a payment from revenues appropriated for General Assistance to an employer for each General Assistance (GA) recipient who becomes employed through this program and is employed for at least 26 weeks and earns a minimum of \$800 per month in gross wage earnings,

(c) **Wage Subsidy—Payment Schedule.** A wage subsidy payment shall only be issued to an employer by the Department of Human Services upon receipt of documentation of gross wage earnings paid to a participant of the program by the employer for the first 26 weeks of employment, except when the payment of a wage subsidy in two installments is approved by the Executive Director. A wage subsidy payment issued to an employer in two installments shall only be issued by the Department of Human Services upon receipt of documentation of gross wage earnings paid to the participant by the employer for 13 consecutive weeks of employment and the second payment shall only be issued upon receipt of documentation of gross wage earnings paid to the same participant by the employer for an additional 13 consecutive weeks of employment.

(d) **Amount of Subsidy.** The employer wage subsidy shall not exceed an amount that is 14 percent of the participant's monthly gross wage earnings and shall not exceed in any month the maximum amount of a General Assistance grant for which the participant would otherwise be eligible. A wage subsidy shall not be paid to an employer for more than the first 26 weeks of employment. Participant "gross wage earnings"

are defined for purposes of this Section as income received by the participant as payment for the participant's labor.

(e) **Authority.** The Department of Human Services may utilize an employer wage subsidy to encourage employers to hire qualified General Assistance (GA) recipients as full time employees. The Department shall make reasonable efforts to coordinate with community agencies that provide job search services to implement these provisions.

(f) **Program Administration.** Prior to the Department's implementation of this authority, the Executive Director shall establish procedures and regulations for the proper administration of this authority. The regulations shall include a prohibition against the payment of a subsidy under this program for placing General Assistance (GA) recipients in positions in which they would be replacing striking employees.

(g) **Report.** The Executive Director of the Department of Human Services shall report to the Board of Supervisors about the results of the Department's implementation of the program one year from the effective date of this ordinance. (Added by Ord. 420-94, App. 12/23/94; Ord. 152-98, App. 5/8/98)

SEC. 20.58. CONTINUING ELIGIBILITY.

(a) Persons who meet the requirements for eligibility for General Assistance are entitled to payments of aid pursuant to this ordinance. Recipients are required to comply with all applicable provisions of this ordinance and the regulations promulgated thereunder.

(b) No withholding, decrease, or discontinuance of aid shall occur unless the person to be affected has been advised of the possibility of such action by means of a Notice of Proposed Action and has been afforded the opportunity for a hearing to dispute the proposed action.

(c) Should an applicant and/or recipient fail to attend any day of a scheduled work assignment program, without excuse presented to the Department within three work days or, subject to the discretion of the Executive Director within 15 days, the aid or the application for aid shall be

denied/discontinued, provided the applicant and/or recipient shall have an opportunity to contest the basis for such denial/discontinuance at an expedited hearing. If an applicant and/or recipient fails within the reporting period to complete 30 percent of the required job searches and/or 30 percent of the required attendance or participation in Department-approved job counseling, vocational rehabilitation, or drug or alcohol treatment programs required during a payment period—or if 30 percent of the required job searches fail to contain essential information for verification or prove unverifiable—aid shall be discontinued, provided the applicant and/or recipient shall have an opportunity to contest the basis for such discontinuance at an expedited hearing. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.58.1. FAILURE TO SATISFY REQUIREMENTS FOR CONTINUING ELIGIBILITY.

Recipients who fail to comply with applicable provisions of this Article and the regulations promulgated thereunder may have their aid withheld and/or decreased and/or discontinued as set forth in Department regulations.

In the case of discontinuance of a recipient, the recipient shall be unable to reapply for a period of at least thirty days from the effective date of discontinuance, provided that the Department affords the recipient all due process to which the recipient is entitled under statutory and other law. (Amended by Ord. 271-81, App. 5/21/81; amended by Proposition V, 11/2/93; Ord. 152-98, App. 5/8/98)

SEC. 20.58.2. CLASSIFICATION AS EMPLOYABLE OR UNEMPLOYABLE.

(a) Recipients shall be classified as either employable or unemployable. Recipients are presumed to be employable unless they are physically or mentally disabled. In addition, there shall be a rebuttable presumption that recipients are employable if denied SSI/SSP as a result of an SSI/SSP administrative hearing decision. This presumption may be rebutted by satisfactory evidence being presented to the Executive

Director pursuant to Department regulations that the recipient is disabled for a period less than 12 months or, in the Department's determination, the recipient is unable to seek or obtain employment. Denial of SSI/SSP in and of itself shall not be grounds for denial of General Assistance. However, if the applicant/recipient has failed to pursue his or her SSI/SSP application without good cause, such recipient shall be denied/discontinued from General Assistance.

(b) Employable applicants and/or recipients shall:

(1) Have registered for employment with the California State Employment Development Department;

(2) Be available for employment;

(3) Accept available employment unless refusal is based on good cause;

(4) Attend the General Assistance Orientation and Evaluation sessions;

(5) Submit 20 verifiable job searches for each month they are on aid to be submitted as required by Department regulation;

(6) Cooperate with and carry out any specific job counseling, job training vocational rehabilitation or drug or alcohol treatment plans developed by San Francisco Department of Human Services, California State Department of Rehabilitation or others, and approved by San Francisco Department of Human Services;

(7) Perform such volunteer or other work assignments as are made available by the Department of Human Services; and

(8) Participate in work experience assignments as required by the Department of Human Services.

(c) Unemployable applicants and/or recipients shall:

(1) Attend the General Assistance Orientation;

(2) Enter into and cooperate in appropriate treatment and therapy programs designed to reduce, eliminate, or compensate for the disabling condition;

(3) Apply for SSI/SSP if a disabling condition is likely to exist or has existed for a year or longer, authorize Department of Human Services reimbursement of General Assistance from retroactive SSI/SSP benefits, and pursue and comply with the procedures under the State SSI/SSP program for successful qualification for benefits under that program; and

(4) Apply for and pursue a claim for any other appropriate benefit program available to the applicant or recipient and pursue and comply with the procedures for successful qualification under such benefit program.

(d) Individuals under 18 years of age, unless emancipated, are exempt from the employment requirements of this Article. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.58.4. TERMINATION OF EMPLOYMENT.

An applicant who has terminated employment without good cause within 45 days of the submission of an application of aid may be denied aid. If an applicant is denied aid on this basis, the applicant may request a fair hearing and a determination will be made as to whether or not good cause existed for the applicant's decision to terminate his or her employment. (Amended by Ord. 271-81, App. 5/21/81)

SEC. 20.58.5. GOOD CAUSE.

For purposes of this Article, where an applicant/recipient is required to show "good cause" for not meeting one of his/her obligations or duties under this Article, good cause may be shown by evidence of any of the following: (1) verified hospitalization; (2) verified illness; (3) verified incarceration; (4) verified disability; or other good cause satisfactorily demonstrated to the Executive Director. (Added by Ord. 152-98, App. 5/8/98)

SEC. 20.58.6. USE OF MINIMUM COMPENSATION HOURLY WAGE RATE TO CALCULATE MAXIMUM NUMBER OF HOURS OF SERVICE.

Where the Department requires that an applicant or recipient engage in work activity, which

would be considered "employment" under the Fair Labor Standards Act (29 U.S.C. §§ 201 et. seq.) and any applicable U.S. Department of Labor Guidelines, to become eligible or maintain eligibility for aid under this Article, the maximum number of hours of work assignments that the Department may require shall be calculated by dividing the Maximum Monthly Assistance Grant to which a recipient is eligible under Section 20.57 of this Chapter divided by the Minimum Compensation Ordinance hourly wage rate established under Section 12P.3(b)(3) of the Administrative Code. (Added by Ord. 81-06, File No. 051924, App. 4/21/2006)

SEC. 20.59. AID PAYMENTS.

(a) **Emergency Assistance.** Emergency assistance of up to two weeks shall be provided in the form of in-kind aid, vouchers, warrants, or electronic benefit transfers. During this period of emergency assistance, the Department of Human Services shall investigate the facts material to the determination of eligibility for the General Assistance Program. If good cause exists that said investigation cannot be completed within two weeks, emergency assistance may be extended for another two weeks.

The Executive Director of the Department of Human Services is authorized to contract with social service agencies for the provision of emergency assistance outside normal working hours.

(b) **Normal Payment Periods.** The normal payment period may be either every two weeks, semimonthly, or monthly. There is no limit to the number of normal payment periods during which a recipient may receive aid.

(c) **Supplemental Rent Payments.** Applicants or recipients whose verified monthly rent exceeds the maximum monthly grant for which they are eligible may elect to have rental payments made in the form of a two-party check payable to the applicant/recipient and the housing provider for the entire amount of the rent not to exceed the applicable monthly amount listed below.

MAXIMUM SUPPLEMENTAL MONTHLY RENT PAYMENT AMOUNT

Single Individual Applicant/Recipient.....	\$345
Number of Eligible Persons in Same Family	
2 Persons.....	\$ 567
3 Persons.....	703
4 Persons.....	834
5 Persons.....	952
6 Persons.....	1,070
7 Persons.....	1,175
8 Persons.....	1,281
9 Persons.....	1,388
10 Persons	1,508

In the case of more than 10 persons in a family budget unit, an additional \$25 each month shall be paid for each additional person in the family budget unit.

The "housing provider" must be the owner of the property, or the owner's designated management agent, on which the applicant/recipient resides, or a nonprofit community organization that either directly, or through agreements with property owners, provides housing. Supplemental rent payments shall not be considered "personal needs" for purposes of Section 20.57.3 of this Article. In addition, the termination of supplemental rent payments shall be subject to the notice provisions of Section 20.60. However, the applicant/recipient may waive such notice, or any portion of the 10 calendar day notice period to allow for a change in aid payment. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98; Ord. 93-07, File No. 070208, App. 4/27/2007)

SEC. 20.59.1. AID PAYMENTS; IN GENERAL.

General Assistance aid payments may be provided in form of in-kind benefits, in-kind orders, vouchers, checks, electronic benefit transfers, or warrants. (Amended by Ord. 271-81, App. 5/21/81; Ord. 93-07, File No. 070208, App. 4/27/2007)

**SEC. 20.59.2. AID PAYMENTS;
MANDATORY DIRECT RENT PAYMENT
PROGRAM.**

The Department may require those applicants and recipients who have not secured their own housing to participate in a mandatory direct rent payment program. Under such a program, notwithstanding Section 20.59.4(b), the Department may pay housing costs for an applicant or recipient directly to the housing provider, or a third party, with whom the Department may contract, on behalf of the housing provider. Such direct rent payment shall be deducted from the maximum General Assistance grant amount, as specified in this Article, for which an applicant or recipient is eligible. The Department shall adopt regulations to provide a mechanism for payment to the applicant or recipient the balance of any grant amount to which he or she is entitled and may adopt additional regulations as necessary to implement this program.

For purposes of this Section, the Department may adopt regulations to define "housing" which would qualify for this program to include, but not be limited to, public and private rental housing, supportive housing managed by community organizations or public agencies, transitional housing, or other means of accommodation as determined appropriate by the Executive Director, and which conforms to applicable health, building and safety codes.

Refusal to accept placement in housing provided under this program, subject to the provisions of Section 20.57.1(b) of this Article, constitutes grounds for denial or discontinuance of aid. (Amended by Ord. 212-80, App. 5/16/80; amended by Proposition N, 11/8/94; Ord. 152-98, App. 5/8/98)

**SEC. 20.59.3. AID PAYMENTS; IN-KIND
AID.**

Assistance in the form of in-kind benefits, in-kind orders, electronic benefit transfers, or emergency checks shall be used:

- (a) As aid payments.

(b) For applicants and recipients who declare themselves to be homeless. Applicants and recipients are required to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing. Self-declared homeless applicants and recipients shall receive in-kind benefits for housing, utilities, and meals. If in-kind benefits are not available, such applicants and recipients shall receive the cash assistance equivalent to the income-in-kind value of housing, utilities, and/or meals, whichever is not available, if otherwise eligible for these amounts. Failure to comply with the rules of a housing program that results in ejection from that housing program will be considered failure to satisfy the requirements for continuing eligibility for aid and will result in discontinuance from the General Assistance Program, subject to the notice and hearing provisions of this Article.

(c) For Eligible persons awaiting transportation arrangements, provided that aid shall not exceed one week.

(d) For Eligible homeless persons awaiting admission into a hospital or institution.

(e) For Persons who have demonstrated inability to handle cash payments for necessities of life. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98; Proposition N, 11/5/2002; Ord. 193-03, File No. 030871, App. 7/25/2003; Ord. 93-07, File No. 070208, App. 4/27/2007)

**SEC. 20.59.4. AID PAYMENTS; TO WHOM
PAID AND DELIVERED.**

(a) Aid payments may be mailed directly to the recipient or substitute payee. The Department of Human Services may require that aid payments be picked up at a designated location. Aid payments shall not be mailed to a post office box, a mail receiving agency, or to an address outside of San Francisco, except upon approval of the Executive Director of the Department.

(b) Aid payments may be made payable only to the recipient or his designated co-payee and recipient jointly.

(c) No aid shall be paid or delivered unless the recipient is physically present and residing in the City and County of San Francisco. (Added by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.59.5. AID PAYMENTS; INITIAL PAYMENT.

The initial payment made to a recipient shall be in the form of in-kind benefits, in-kind orders, vouchers, checks, two-party checks, electronic benefit transfers, or warrants. (Added by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.59.6. AID PAYMENTS; ADMINISTRATIVE DISCONTINUANCE.

Aid shall be discontinued under any of the following circumstances:

- (a) Death of recipient.
- (b) Abandonment of residency in San Francisco by recipient.
- (c) Recipient requests that his or her aid be discontinued. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.7. AID PAYMENTS; CHANGES IN GENERAL ASSISTANCE GRANTS.

(a) Changes in grant shall be made when a recipient of General Assistance becomes eligible for aid in a different amount because of altered circumstances.

(b) A change in aid shall be made effective with the next regular pay date following knowledge by the worker of circumstances warranting a change in grant. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.8. AID PAYMENTS; LOST, FORGED OR STOLEN WARRANTS.

Lost, forged, or stolen warrants may be replaced only in accordance with specific procedures adopted by the Department. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.9. AID PAYMENTS; LOSS OR THEFT OF WARRANT PROCEEDS.

If a warrant has been cashed and the money lost or stolen, no replacement of the warrant or issuance of orders shall be permitted. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.10. FAIR ADMINISTRATION; DISCLOSURES; OVERPAYMENT.

The Department shall administer this program fairly to the end that all eligible persons who apply for assistance shall receive aid promptly, with due consideration for the needs of the applicant/recipient and the safeguard of public funds.

(a) Any applicant for, or recipient or payee of, aid under this Article shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility, continuing eligibility and grant.

(b) Any applicant for, or recipient or payee of, aid under this Article shall be responsible for reporting accurately and completely all facts required of him or her pursuant to Subdivision (a) and for reporting promptly any changes of those facts.

(c) Any person who makes full and complete disclosure of those facts as explained to him or her pursuant to Subdivision (a) is entitled to rely upon the aid granted as being accurate, and the warrant he or she receives as correctly reflecting the grant award except as provided in Subdivisions (d), (e), (f).

(d) Overpayment due to administrative error or negligent failure to report facts required by this Article or department regulations may be recouped in accordance with the provisions of Section 20.55.2(r) governing recoupment in the absence of recipient fraud, until collected in full, following discovery of overpayment.

(e) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts required by this Article or department regulations shall be recouped in accordance with the provisions of Section 20.55.2(r)

governing recoupment upon an administrative determination of recipient fraud, until collected in full, following discovery of overpayment.

(f) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts as required by this Article or department regulations shall result in immediate discontinuance of aid subject to fair hearing procedures in Article VII of this Chapter. The case shall be referred to the Special Investigation Unit of the Department of Human Services. Any aid granted under such circumstances shall be offset against any future aid as set forth in Section 20.55.2(r). (Amended by Ord. 271-81, App. 5/21/81; amended by Proposition V, 11/2/93; Ord. 152-98, App. 5/8/98)

SEC. 20.59.11. QUALITY CONTROL PROGRAM; REQUIREMENTS.

(a) Department of Human Services shall conduct a thorough and reliable program of quality control with respect to the administration of General Assistance.

(b) The quality control program shall include, but not be limited to:

(1) The selection and full field review of a random, representative sample of General Assistance cases drawn from all active General Assistance cases.

(2) The identification and analysis of administrative errors and discrepancies contained in the sample and the actual and projected fiscal impact thereof.

(3) The development and implementation of measures to correct or alleviate the errors and discrepancies. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.59.12. QUALITY CONTROL PROGRAM; REPORTS.

(a) Department of Human Services shall report quality control findings semiannually to the Human Services Commission. The semiannual report shall encompass the months January through June and be delivered no later than July

31st, and the months July through December and be delivered no later than January 31st of the following year.

(b) The semiannual report shall contain, but not be limited to:

(1) The number of cases in the sample by month and year to date.

(2) The number of cases found ineligible, overpaid or underpaid for the month and year to date.

(3) The actual and projected total fiscal impact resulting from ineligibility and overpayments for the month and year to date.

(4) The corrective actions proposed and the schedule of implementation for corrective actions.

(5) The status of previous corrective actions and any other information requested by the Board of Supervisors. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.59.13. RECORDS; MAINTENANCE OF.

The Department shall maintain a case record for every recipient. The Department shall also maintain a record on those applicants whose requests for assistance were denied, such record shall include name and address of applicant and the reason(s) for denials. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.14. RECORDS; CONFIDENTIALITY.

All General Assistance records shall be confidential and shall not be opened to examination or inspection except by the Grand Jury of the County or by a board or an officer of the State or the County charged with the administration, supervision or direction of the General Assistance Program, or upon written waiver by the applicant or recipient. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.15. RECORDS; DESTRUCTION OF.

Except as otherwise provided in Section 20.31, all inactive case records that are over five years

old may be destroyed. All records pertaining to denial of initial eligibility may be destroyed after five years. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.59.16. FRAUD IN OBTAINING AID.

Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by this Article or department regulations, obtained aid under this Article, the matter shall be referred to the District Attorney's office for appropriate action.

Further, upon the first discontinuance of aid within a twenty-four month period due to false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by the Article or department regulations, an applicant or recipient shall be unable to reapply for aid for a period of thirty days.

Upon the second such discontinuance within a twenty-four month period, the applicant or recipient shall be unable to reapply for aid for a period of sixty days.

Upon the third, or additional, such discontinuance within a twenty-four month period, the applicant or recipient shall be unable to reapply for aid for a period of ninety days. (Amended by Ord. 212-80, App. 5/16/80; amended by Proposition V, 11/2/93; Ord. 152-98, App. 5/8/98)

SEC. 20.60. HEARING; OPPORTUNITY.

An applicant for or recipient of General Assistance dissatisfied with any actions of the Department relating to withholding, decrease, denial, discontinuance, and/or recoupment of overpayment of aid shall be accorded a fair hearing upon filing a timely request with the Department. (Amended by Ord. 271-81, App. 5/21/81)

SEC. 20.60.1. NOTICE OF PROPOSED ACTION.

The Department shall issue a Notice of Proposed Action whenever it intends to withhold, decrease or impose denial, discontinuance, and/or

recoupment of overpayment of aid. In all cases, except where an initial denial is involved or as provided in Section 20.58(c), this notice shall be hand delivered or mailed at least 10 calendar days prior to the proposed action.

In those cases where an expedited hearing is provided for, notice shall be delivered or mailed at least five calendar days prior to the proposed action. Such notice shall include all alleged acts in the record known to the Department at the time upon which such action can be based under Department regulations. The notice shall describe with reasonable particularity the act or acts which form the basis for the proposed action. (Amended by Ord. 271-81, App. 5/21/81)

SEC. 20.60.2. REQUEST FOR HEARING.

A claimant or an authorized representative may request a fair hearing. This request may be made in written form, or by filling out a Request for Fair Hearing form, available at the General Assistance office, or orally as specified by the Executive Director in Department regulations. It shall be made within seven calendar days of the date of hand-delivery or 10 calendar days from the date of mailing of the Notice of Proposed Action, or within three work days of the effective date of the action. If no request for a hearing is either delivered to the Department of Human Services or postmarked within that period, no hearing shall be granted except in cases of verified hospitalization, verified illness, verified incarceration, verified disability or other good cause satisfactorily shown to the Executive Director. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.60.3. AID PAID PENDING.

If a recipient or an authorized representative makes a timely request for a hearing, aid shall be continued pending the applicant's receipt of the hearing decision, except as provided in Section 20.58(c). A decision shall be deemed to have been received by the recipient when either it is hand-delivered to the recipient or three days after the decision has been mailed to the recipient. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.60.4. HEARING; NOTICE OF HEARING; WHEN HELD.

(a) After a hearing has been requested, a time and place for the hearing shall be established. Timely notice shall be given to the applicant or recipient indicating the day, date, time, and place of the hearing. In no event shall a hearing date be scheduled for a time less than five days after the Department's receipt of a request, unless the applicant makes a knowing and intelligent waiver of his or her right to a record review.

(b) Where an applicant for General Assistance is denied aid, a hearing shall be calendared within seven days.

(c) All hearings shall be held within 15 calendar days of the request therefor. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.60.5. IMPARTIAL HEARING OFFICER.

The Executive Director shall designate as an impartial hearing officer a person who is not involved in the administration of the General Assistance Program. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.60.6. HEARING; HEARING RIGHTS.

The applicant or recipient shall be advised in the Notice of Proposed Action of applicant's or recipient's rights to counsel or other representative, to review pertinent records and regulations at least five working days prior to the hearing, to present testimony and documentary evidence, to cross-examine all witnesses, to have the proceedings tape-recorded, and to have a translator provided for the hearing if the applicant or recipient is not proficient in English. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.60.7. INFORMALITY, EVIDENCE, APPEARANCE AND COUNSEL.

The hearing shall be conducted in an impartial and informal manner. All evidence shall be

submitted under oath or affirmation. The hearing officer is not bound by the rules of evidence or procedures applicable to judicial proceedings. The applicant/recipient shall attend the hearing in person and may be represented by counsel or a representative. While the applicant/recipient may or may not be represented by counsel or a representative, the client must appear in order for the hearing to be held. However, where the applicant/recipient establishes good cause for nonattendance prior to the hearing under Section 20.60.9, counsel or a representative may appear on behalf of the applicant/recipient. (Amended by Ord. 212-80, App. 5/16/80; Ord. 152-98, App. 5/8/98)

SEC. 20.60.8. HEARING DECISION.

The hearing officer shall:

(a) Render a written decision within seven calendar days of the hearing indicating factual findings and grounds for the decision. Such decision shall be based solely upon evidence presented at the hearing and specifically state the facts upon which it was based, the authority relied upon and any other reasons for the decision.

(b) Render the decision to the applicant or recipient, where possible, immediately upon conclusion of the hearing and furnishing him or her a copy at that time. The decision must set forth with reasonable particularity the basis for the decision.

(c) Mail the decision to the applicant or recipient if an immediate decision cannot be rendered. (Amended by Ord. 212-80, App. 5/16/80)

SEC. 20.60.9. HEARING; FINALITY; EFFECT OF NONAPPEARANCE.

(a) The result of all hearings are considered final and there is no further right of administrative appeal.

(b) When the applicant/recipient does not appear for the scheduled hearing, it is presumed that the applicant/recipient ceases to contest the decision. The withholding, decrease, denial, discontinuance, and/or recoupment of overpay-

ments of aid will, therefore, be effected. The applicant or recipient may, for good cause shown, make a written request, or oral request as specified in the Executive Director's Regulations, for a second hearing within 15 days of the scheduled date for the first hearing.

Such request must specify the good cause for nonattendance at the first hearing. This provision is satisfied by evidence of any of the following: (1) Verified hospitalization; (2) verified illness; (3) verified incarceration; or (4) verified disability or other good cause satisfactorily shown to the Executive Director. (Amended by Ord. 271-81, App. 5/21/81; Ord. 152-98, App. 5/8/98)

SEC. 20.60.10. OPERATIVE DATE.

No reduction in the GA grant level will be operative until the Executive Director of the Department of Human Services certifies to the Clerk of the Board of Supervisors that the PAES, SSIP and CALM programs have commenced. All other provisions shall be operative on the effective date of this ordinance. (Added by Ord. 152-98, App. 5/8/98)

SEC. 20.60.11. TERMINATION OF DISCRETIONARY COUNTY-FUNDED PROGRAMS.

In the event that the PAES or/and CALM or/and SSIP program(s) is(are) terminated by action of the Board of Supervisors, the Maximum General Assistance Grant Amount as set forth in this Article shall be adjustable to \$345 per month per individual with corresponding adjustments for family budget units. (Added by Ord. 152-98, App. 5/8/98)

SEC. 20.60.12. FUNDING.

A baseline appropriation for housing and related services provided as in-kind aid shall be established using the City and County of San Francisco FY 2002-2003 Annual Appropriation Ordinance and any supplemental appropriations for the amount of cash aid payments to applicants and recipients who declare themselves to be homeless. In subsequent fiscal years, this baseline amount shall be appropriated to the Department of Human Services to fund housing

and related services for homeless adults without dependents. This funding may be used to support, but shall not be limited to, some or all of the following: hotel master lease programs, permanent supportive housing, improvements of conditions in existing shelters, expansion of shelter capacity, mental health and substance abuse treatment, outreach, a fund for rental deposits, SSI advocacy programs, rep-payee services, case management and meals for the homeless population through direct services and/or contracts. Nothing in this section is intended to conflict with Article IX of the San Francisco City Charter. (Added by Proposition N, 11/5/2002; amended by Ord. 193-03, File No. 030871, App. 7/25/2003)

SEC. 20.60.13. EVALUATION.

The provision of in-kind aid is to be evaluated by the Office of the Controller of the City and County of San Francisco every three years for program effectiveness and cost efficiency. (Added by Proposition N, 11/5/2002; amended by Ord. 193-03, File No. 030871, App. 7/25/2003)

SEC. 20.60.14. OPERATIVE DATE OF AMENDMENTS.

The provisions of this amendment, Sections 20.59.3(b); 20.57.1(a), (b), (c), (e); 20.57.6A; 20.60.12; and 20.60.13 shall become operative on or before July 1, 2003. (Added by Proposition N, 11/5/2002; amended by Ord. 193-03, File No. 030871, App. 7/25/2003)

ARTICLE VIII: [RESERVED]

San Francisco - Administrative Code

[INTENTIONALLY LEFT BLANK]

ARTICLE IX: PERSONAL ASSISTED EMPLOYMENT SERVICES (PAES) PROGRAM

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|----------------|--|---------------|--|
| Sec. 20.70. | Title. | Sec. 20.76.3. | Housing. |
| Sec. 20.71. | Purpose. | Sec. 20.76.4. | Alternative Payment Methods;
Direct Payments to Room and
Board Facilities Permitted. |
| Sec. 20.72. | Definitions. | Sec. 20.76.5. | Special Allowances;
Transportation Out of the City. |
| Sec. 20.73. | Principles. | Sec. 20.76.6. | Employer Wage Subsidy—PAES
Program. |
| Sec. 20.74. | Administration. | Sec. 20.77. | Continuing Eligibility. |
| Sec. 20.75. | Eligibility. | Sec. 20.77.1. | Participant Agreement. |
| Sec. 20.75.1. | Residency Requirement. | Sec. 20.77.2. | PAES Plan. |
| Sec. 20.75.2. | Proration of Salary of Full-Time
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Twelve-Month Period. | Sec. 20.77.3. | Sanctions. |
| Sec. 20.75.3. | Proration of Income Over
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| Sec. 20.75.4. | Proration of Income of
Self-Employed and Freelance
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| Sec. 20.75.5. | Proprietor of Business
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| Sec. 20.75.6. | Rebuttable Presumption of
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| Sec. 20.75.7. | Rebuttable Presumption of
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| Sec. 20.75.10. | Exempt Income or Resources. | Sec. 20.83. | Ineligibility for General
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| Sec. 20.75.11. | Exemption for Terminal Illness. | Sec. 20.84. | Fair Administration;
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| Sec. 20.75.13. | Ineligibility of Fleeing Felons. | Sec. 20.86. | Hearings. |
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| Sec. 20.75.15. | Fingerprint Information. | Sec. 20.86.2. | Stipend Paid Pending. |
| Sec. 20.75.16. | Reimbursement Agreement. | Sec. 20.86.3. | Impartial Hearing Officer. |
| Sec. 20.75.17. | Labor Dispute. | Sec. 20.86.4. | Hearing; Hearing Rights. |
| Sec. 20.76. | PAES Stipends. | Sec. 20.86.5. | Informality, Evidence,
Appearance and Counsel. |
| Sec. 20.76.1. | Municipal Railway Fast Pass. | Sec. 20.86.6. | Hearing Decision. |
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- Sec. 20.86.7. Hearing; Finality; Effect of Nonappearance.
- Sec. 20.87. Fraud in Obtaining Stipends.
- Sec. 20.88. Records; Confidentiality.
- Sec. 20.89. Records; Destruction of.
- Sec. 20.90. Authority to Terminate the Program.
- Sec. 20.91. Severability.
- Sec. 20.92. Limited to Promotion of General Welfare.
- Sec. 20.93. Operative Date.
- Sec. 20.94. Funding.
- Sec. 20.95. Evaluation.
- Sec. 20.96. Operative Date of Amendments.

SEC. 20.70. TITLE.

This Article shall be known as "Personal Assisted Employment Services Program" (PAES). (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.71. PURPOSE.

The purposes of this program are: (1) to provide quality evaluation of vocational experience, qualifications, strengths and needs; and (2) to provide the participant with the supportive services and activities necessary to assist her/him in obtaining paid employment. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.72. DEFINITIONS.

For the purposes of this Article:

- (a) "Applicant" means a person who is in the process of applying for assistance under this Article.
- (b) "Assistance" means services and/or cash payments.
- (c) "CALM" means the Cash Assistance Linked to Medi-Cal Program as set forth under Article X of this Chapter.
- (d) "CalWORKs" means the California Work Opportunity and Responsibility to Kids as defined in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or any successor program.

(e) "Decrease" means any reduction in a participant's current cash stipend amount under this Article.

(f) "Denial" means a determination, based on a PAES application, that the applicant is not eligible for PAES.

(g) "Department" means the Department of Human Services.

(h) "Discontinuance" means the termination of a person's assistance.

(i) "Electronic benefit transfer" means a method of transferring benefits through a centralized computer system so that an applicant/participant may obtain her/his benefits at facilities such as automated teller machines (ATM) and point-of-sale (POS) terminals using an access device such as a magnetic stripe plastic card. "Electronic benefit transfer" includes direct deposits.

(j) "Executive Director" means the Executive Director of the Department of Human Services.

(k) "Family budget unit" means an eligible applicant/participant and her/his spouse or "domestic partner," as defined under Section 62.2 of the San Francisco Administrative Code, and/or any of the applicant/participant's children who are under age 18, living with, and applying for PAES with, such applicant/participant, provided that such child(ren) was (were) never eligible for TANF/CalWORKs.

(l) "General Assistance" means the General Assistance Program as set forth under Article VII of this Chapter of the San Francisco Administrative Code (S.F. Adm. C. §§ 20.55, et seq.).

(m) "Job search" shall include, but is not limited to, (1) sending applications, resumes, and cover letters to apply for available positions for which the participant meets the minimum qualifications, with copies of these documents and the telephone number of the prospective employer provided to the Department of Human Services so they can be verified; and (2) participation by a union member in union hiring hall programs that make use of telephone job searches for currently available positions.

(n) The word "may" means the provision is permissive.

(o) "Medi-Cal" means the Medi-Cal Program as set forth in California Welfare and Institutions Code Sections 14000 et seq.

(p) "Participant" means a person who is receiving assistance under this Article.

(q) "Recoupment" means the collection of past overpayments under the PAES Program by deducting from current payments not more than 10 percent of the current stipend amount absent an administrative determination of participant fraud and not more than 40 percent with an administrative determination of participant fraud and an administrative evaluation of the participant's current ability to make repayments.

(r) "Residing in an institution" shall mean that the applicant/recipient is staying in a facility that provides housing and three meals a day.

(s) The word "shall" means the provision is mandatory.

(t) "SSA" means the Social Security Administration.

(u) "SSI" means Supplemental Security Income.

(v) "SSIP" means the Supplemental Security Income Pending Program as set forth under Article XI of this Chapter.

(w) "State" means the State of California.

(x) "SSI/SSP" means Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled as defined in the Welfare and Institutions Code Section 12000, et seq.

(y) "TANF" means Temporary Assistance to Needy Families as defined in Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(z) The word "withholding" means the retention of stipends. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.73. PRINCIPLES.

Assistance is to be administered in a manner which is consistent with the purposes of this program and which respects individual privacy and personal dignity:

(a) PAES is to be administered promptly and humanely, without discrimination on account of race, sex, sexual orientation, religion or political affiliation.

(b) PAES is to be administered so as to encourage self-respect, self-reliance and the desire to be a good citizen, useful to the community.

(c) PAES is to be administered with courtesy, consideration and respect and without attempting to elicit any unnecessary information.

(d) Duties should be performed in such a manner as to secure for every applicant or participant the assistance to which s/he is eligible.

(e) There is to be no question, inquiry or recommendation relating to the political or religious opinions or affiliations of any applicant or participant.

(f) PAES is to be administered in the most cost-effective manner possible. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.74. ADMINISTRATION.

(a) This program shall be administered by the Department of Human Services. The Executive Director shall establish rules and regulations for the proper administration of this Article.

(b) In actual emergencies, the Executive Director of the Department of Human Services may make exceptions to this Article pending action by the Board of Supervisors. Such emergency exceptions shall be reported to the Board of Supervisors within five working days. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75. ELIGIBILITY.

(a) The services necessary to assist a participant in obtaining paid employment, and a cash stipend shall be available to indigent San Francisco adult residents who make a commitment to develop and carry out a PAES Plan.

(b) Individuals serving a sanction under the General Assistance Program are not eligible to participate in PAES until that sanction period is completed, and any receipt of General Assistance benefits has been terminated. Additionally, an individual serving a sanction for fraud under any County-funded indigent assistance program under this Chapter is ineligible to receive PAES until that sanction period is completed.

(c) All applicants/participants, and all members of the family budget unit, are required to apply for, and pursue receipt of payment(s) from any and all federal, State, and/or private means of assistance for which they may be eligible as directed by the Department. This includes, but is not limited to: (1) Unemployment Insurance Benefits; (2) Worker's Compensation Insurance; (3) SSI; (4) retirement benefits, (5) any other insurance or disability payments. Failure to apply for, and pursue receipt of, any such assistance to which an applicant/participant, or any member of the family budget unit, may be eligible shall be considered to be a failure to meet continuing eligibility requirements of this Article.

(d) Individuals residing in an institution are not eligible to receive assistance under this Article.

(e) Applicants may be required to attend group orientation session(s), and failure to do so shall be grounds for denial of assistance. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.1. RESIDENCY REQUIREMENT.

(a) Verified residency in the City and County of San Francisco for 30 continuous days, prior to the time of application, is a requirement of eligibility for PAES. Residency in the City and County of San Francisco is established by physical presence and intent to reside in the City and County of San Francisco, which is satisfactorily substantiated by the applicant or participant.

(b) Eligibility for PAES will terminate immediately upon abandonment of residency in the City and County San Francisco. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.2. PRORATION OF SALARY OF FULL-TIME CERTIFIED EMPLOYEE OF SCHOOL DISTRICT, UNIVERSITIES, COMMUNITY COLLEGES OVER A TWELVE-MONTH PERIOD.

The salary of a full-time certified employee of a school district, private school, community college, or university shall be prorated over a 12-month period for the purpose of determining eligibility for assistance under this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.3. PRORATION OF INCOME OVER CONTRACT PERIOD.

The income of any person under a contract of employment on an annual basis who works and receives income from such contract in fewer than 12 months, but more than eight months, shall be prorated over the period of the contract for the purposes of this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.4. PRORATION OF INCOME OF SELF-EMPLOYED AND FREELANCE WORKER OVER A TWELVE-MONTH PERIOD.

The income of any self-employed person or freelance worker shall be prorated over a 12-month period for the purpose of determining eligibility for assistance under this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.5. PROPRIETOR OF BUSINESS INELIGIBLE.

Proprietors of businesses who employ other workers are ineligible for assistance under this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.6. REBUTTABLE PRESUMPTION OF INELIGIBILITY—STUDENTS.

Status as a student shall create a rebuttable presumption that such person is unavailable for, or unable to enter into, a PAES Participant Agreement and a PAES Plan in order to obtain paid employment within the time limits specified in this Article. This presumption may be rebutted by entering into a PAES Participant Agree-

ment and/or a PAES Plan, in which the applicant/participant agrees to a course of study that: (1) will lead to paid employment within the time limits specified in this Article; and (2) does not prevent the applicant/participant from complying with the other components of the PAES Agreement and/or PAES Plan according to the specified time frame(s). (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.7. REBUTTABLE PRESUMPTION OF INELIGIBILITY— CURRENT INCOME OR EXPENSES.

Verified paid income or expenses which exceed the otherwise eligible applicant/recipient's total monthly income and/or assets during month of application or a current month of eligibility shall create a rebuttable presumption of ineligibility for a PAES stipend. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.8. ALLOWABLE REAL PROPERTY.

(a) The applicant shall transfer or grant to the City and County of San Francisco any interest which the applicant has in any real property as security for the funds expended for PAES.

(b) An applicant or participant of PAES may retain real property used as her/his home, provided that the applicant's or participant's net monthly housing expense does not exceed the otherwise eligible applicant/participant's total monthly income and/or assets. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.9. ALLOWABLE PERSONAL PROPERTY.

No assistance under this Article shall be expended for any person who has not exhausted all assets and resources available to such person, except for those personal properties listed below:

(a) Cash assets, savings and/or checking accounts, the total of which does not exceed the current monthly maximum stipend available to a single individual under this Article. Any combination of these assets that exceeds the monthly maximum stipend available to a single individual under this Article shall be offset against

the participant's stipend on a dollar-for-dollar basis. If the applicant is transitioning from the General Assistance Program, SSIP or CALM and has been participating in the Earned Income and Asset Disregard Program within the three months prior to application for PAES, such applicant may retain a total of up to \$2,000 in savings. If the applicant is transitioning from SSI to PAES, the applicant may retain a total of up to \$2,000 in savings;

(b) Personal effects, exclusive of luxury jewelry;

(c) Household furnishings;

(d) Tools, trade equipment and fixtures used in the individual's regular trade or work;

(e) Insurance policies or funds placed in trust for the provision of interment or for funeral expenses to the extent of not more than \$600 per family;

(f) An interment plot for use by members of the applicant's or participant's family;

(g) A vehicle with cash value of less than \$4,650. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.10. EXEMPT INCOME OR RESOURCES.

For the purpose of this Article:

(a) Personal property, income or resources shall not include income from relocation payments to participant's receiving assistance under this Article being displaced by a redevelopment agency.

(b) Retirement benefits may be retained upon determination by the Executive Director or her/his designee that the applicant or participant will be reemployed in the near future and that such employment is contingent upon the retirement fund not being withdrawn.

(c) Any verified loans made to a participant, or to an applicant in the month of application, or one month immediately prior to application, for the purpose of enabling that participant or applicant to pay her/his rent, or for the purpose of payment of first and last month's rent and any lawful rental deposit, shall not be considered income or resources available to that participant or applicant.

(d) Income tax refunds, including the Earned Income Tax Credit (EITC), issued to the applicant or participant shall not be considered as income or resources available to the applicant or participant.

(e) Payments made to the applicant or participant under the Foster Care or FSET/GATES programs shall not be considered as income or resources available to the applicant or participant.

(f) SSI/SSP benefits and resources of a member of the PAES family shall not be considered as income or resources available to the applicant or recipient.

(g) The portion of any student grants or loans that is paid directly to the educational institution for tuition, and/or fees, and/or books. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.11. EXEMPTION FOR TERMINAL ILLNESS.

Terminally ill applicants with medical verification that such applicant has a remaining life expectancy of six months or less are exempt from:

(a) Providing documentation of legal status in the United States;

(b) The provisions of this Article regarding the cash value of a vehicle, provided that the applicant can demonstrate that such vehicle is necessary to transport the applicant to and from medical treatment, and that he or she is physically and/or mentally unable to use public transportation;

(c) The provisions of this Article regarding the requirement to obtain and present any photo identification.

Such applicants shall meet all other eligibility requirements.

There shall be no time limit to the duration of eligibility for PAES authorized under this Section. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.12. INELIGIBILITY OF INDIVIDUALS WHO ARE MEMBERS OF A CALWORKS ASSISTANCE UNIT.

(a) Any individual who is a member of an assistance unit receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 of the

California Welfare and Institutions Code (CalWORKs), shall not be eligible for PAES under this Article if the individual has been determined ineligible for CalWORKs pursuant to Welfare and Institutions Code Section 11251.3.

(b) Any individual who is not eligible for aid under CalWORKs pursuant to Welfare and Institutions Code Section 11454(b) shall not be eligible for PAES until all of the children of the individual on whose behalf aid was received, and who live in the home with the individual, are 18 years of age or older.

(c) Any individual who is receiving aid under CalWORKs on behalf of an eligible child, but who is either ineligible for aid or whose needs are not otherwise taken into account in determining the amount of aid to the family pursuant to Section 11450 of the Welfare and Institutions Code due to the imposition of a sanction or penalty, shall not be eligible for aid or assistance under this part.

(d) The Executive Director, in her/his sole discretion may grant an exception to this Section. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.13. INELIGIBILITY OF FLEEING FELONS.

(a) An individual shall not be eligible for PAES if he or she is: Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.14. PHOTO IDENTIFICATION.

(a) Each applicant shall present proof of identity and a verifiable social security number. Only the following photo identification shall be accepted:

(1) California Department of Motor Vehicles Driver's License;

(2) California Department of Motor Vehicles Identification Card;

(3) Current United States Passport provided that such Passport contains a photo taken of applicant/participant when s/he was at least 18 years of age;

(4) Current Immigration and Naturalization identification, provided that such identification contains a photo which was taken of the applicant/participant when s/he was at least 18 years of age and was taken within 10 years prior to the date of application of the applicant/participant.

(b) In addition, the Department may require applicants and participants to obtain and present Department-issued identification. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.15. FINGERPRINT INFORMATION.

All applicants for, and participants in, PAES shall be fingerprinted at the Department or at a Department-approved facility in accordance with procedures established by the Executive Director. These records shall be used exclusively to prevent multiple payments under this Article or any other federal, State or County assistance program. The Executive Director is authorized to create, by regulation, exemptions from this requirement based on physical or mental disability. The refusal of an applicant or participant to comply with the fingerprint procedures shall be grounds for denial of, or discontinuance from, PAES.

Fingerprints gathered under this Section are subject to all applicable federal and State laws governing the confidentiality of information regarding applicants for, or participants of, public benefits. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.16. REIMBURSEMENT AGREEMENT.

All applicants for PAES shall sign an Interim Assistance Reimbursement Agreement, in the event that the applicant/participant is subsequently awarded SSI. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.75.17. LABOR DISPUTE.

Unemployment due to a bona fide strike, lockout, or other labor dispute shall not affect eligibility provided that the applicant meets all other eligibility requirements. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.76. PAES STIPENDS.

(a) For each eligible individual or for each eligible family budget unit of two or more persons who qualify for stipends under this Article, the maximum monthly stipend amount which participants shall receive is listed below.

MAXIMUM PAES STIPEND AMOUNT

Single Individual	\$ 395
Number of Eligible Persons in Same Family	
2 Persons.....	\$ 649
3 Persons.....	804
4 Persons.....	955
5 Persons.....	1,089
6 Persons.....	1,223
7 Persons.....	1,343
8 Persons.....	1,464
9 Persons.....	1,586
10 Persons	1,723

In the case of more than 10 persons in a family budget unit, an additional \$25 each month shall be paid for each additional person in the family budget unit. For Family Budget Units in which members receive cash payments from more than one federal, State or County assistance program, except for SSI/SSP, the total aid payment shall consist of the sum of each individual's proportionate share of the aid payment for a family budget unit of the same size within each program for which each member is eligible.

(b) The maximum monthly PAES stipend for which an applicant is eligible shall be the maximum monthly PAES stipend prorated as of the eligibility determination date, minus any nonexempt cash available to the applicant during that calendar month, minus the fair market value of any nonexempt personal property available to the applicant during that calendar month, and minus the value of any prorated in-kind housing, utilities and/or meals available or provided to the applicant. A rent payment, retroactive to the first of the month in which eligibility is determined, may be authorized to prevent eviction from existing housing.

(c) The maximum monthly PAES stipend for which a participant is eligible shall be the maximum PAES stipend minus any nonexempt cash received from sources other than PAES which is available to the participant during the month for which the stipend is paid, minus the fair market value of any nonexempt personal property which is, or will be, available to the participant during the month for which the stipend is paid, and minus the value of any in-kind housing, utilities and/or meals available or provided to the participant.

(d) No PAES stipend shall be issued for less than \$5.00.

(e) PAES assistance and stipends may be provided in the form of vouchers, checks, two-party checks, warrants, electronic benefit transfers, in-kind benefits, and/or through third party contracts.

(f) PAES stipends may be made payable only to the participant or, upon the participant's written authorization, to the participant and a designated co-payee, or to a representative payee.

(g) PAES stipends may be mailed directly to the participant or to the designated representative payee. PAES stipends may be made by electronic benefits transfer. PAES stipends may be picked up at a location designated by the Department. PAES stipends shall not be mailed to a post office box, a mail receiving service, or to an address outside the City and County of San Francisco, except upon specific authorization of the Executive Director.

(h) The Maximum PAES Stipend Amounts listed in Section 20.76(a) of this Article shall be increased by any annual percentage cost of living increase to the Maximum Aid Payment, and according to the same schedule, if such an increase is implemented by the State of California in the TANF/CalWORKs program.

(i) Participants may be provided with assistance, as specified in Subsection (e) above, to help pay, in full or in part, ancillary work-related expenses.

(j) Applicants and recipients are required to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing. Self-declared homeless applicants and recipients shall receive in-kind benefits for housing, utilities and meals. If in-kind benefits are not available, such applicants and recipients shall receive the income-in-kind value of housing, utilities, and/or meals, whichever is not available, if otherwise eligible for these amounts. Failure to comply with the rules of a housing program that results in ejection from that housing program will be considered failure to satisfy the requirements for continuing eligibility for aid and will result in discontinuance from PAES, subject to the notice and hearing provisions of this Article.

(k) A special allowance of up to \$59.00 per month shall be made available to any recipient when the income-in-kind value of housing, and/or utilities, and/or meals provided to that recipient exceeds the maximum monthly stipend for which that recipient is eligible. If such income-in-kind value does not exceed the maximum monthly stipend for which that recipient is eligible, but allows for less than \$59.00 cash per month, that recipient shall receive an amount that, when added to the maximum monthly stipend for which that recipient is eligible, equals \$59.00 cash per month. This section shall not affect the collection of overpayments due to fraud, negligent failure to report facts or administrative error as set forth in this Article. (Added by Ord. 150-98, App. 5/8/98; amended by Proposition N, 11/5/2002; Ord. 93-07, File No. 070208, App. 4/27/2007)

**SEC. 20.76.1. MUNICIPAL RAILWAY
FAST PASS.**

Participants may be provided a Municipal Railway Fast Pass, Municipal Railway tokens, or other transportation assistance when such transportation is necessary to assist the participant in complying with the requirements of this Article. Such assistance shall be in addition to any stipend to which a participant is eligible. (Added by Ord. 150-98, App. 5/8/98)

**SEC. 20.76.2. EARNED INCOME
DISREGARD.**

(a) The Executive Director of the Department of Human Services may establish an Earned Income and Asset Disregard Program for participants who are employed. The Earned Income and Asset Disregard Program shall provide for disregarding a certain amount of gross income that a participant earns as wages and savings derived therefrom when determining a participant's PAES eligibility and stipend amount.

(b) The total amount of gross income disregarded shall not exceed the sum of the following amounts: (1) all of the first \$200 of participant gross wage earnings; (2) two-thirds of the next \$150 of participant gross wage earnings; (3) one-half of the next \$150 of participant gross wage earnings; (4) one-third of the next \$150 of participant gross wage earnings; and (5) one-fifth of the next \$150 of participant gross wage earnings. All participant gross wage earnings above \$800 shall be offset on a dollar-for-dollar basis against the stipend amount to which a participant would otherwise be entitled.

(c) In addition, for participants in this program, up to \$2,000 of participant savings derived from the participant's gross wage earnings shall be disregarded during the individual participant's participation in this program and for up to three months thereafter.

(d) If, as a result of retrospective budgeting, a participant's total currently available financial resources in a month including her/his adjusted PAES stipend, wages, and savings are less than the maximum PAES stipend amount, the participant shall be eligible for a stipend supplement in

the form of a rental expense voucher for unpaid rent in that month and up to \$50 in cash so that the participant's currently available financial resources may total up to the maximum PAES stipend amount. This stipend supplement is available a maximum of three times per year for program participants and is not available to participants who quit a job without good cause.

(e) Participant gross wage earnings are defined for purposes of this Section as any income received by the participant as payment for a participant's labor. All other participant income and assets shall continue to be offset on a dollar-for-dollar basis when calculating the stipend amount to which a participant is otherwise eligible. For individuals participating in this program, the PAES stipend amount shall be adjusted for gross wage earnings on the basis of retrospective budgeting in the month following the participant's receipt of wage income. Verified expenses that exceed the total sum of a participant's stipend, wages, and savings in any given month create a rebuttable presumption of ineligibility for assistance. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.76.3. HOUSING.

(a) "Housing" shall include, but not be limited to, single occupancy residential hotels, master lease rooms, transitional housing, supportive housing programs, residential treatment facilities, shelter.

(b) There shall be no reduction in the PAES stipend for which an applicant/participant is eligible because s/he shares housing with others who are not members of the applicant's/participant's family budget unit as defined under this Article. All applicants/participants shall be required to present a verifiable rent receipt. If the applicant/participant is not the owner or prime lessee of the premises, a verifiable rent receipt signed by the owner or prime lessee may provide evidence of the applicant's/participant's place of residence and monthly share of housing costs.

(c) When an applicant/participant obtains rent-free housing, such housing shall be valued according to Income-in-Kind Values Chart set forth under Title 22 of the California Code of Regulations, Section 50511 (the Income-in-Kind Chart"), rather than at fair market value. The value of the rent-free housing, which is presumed to include utilities, as determined under the Income-in-Kind Chart, shall be deducted from the maximum monthly stipend amount. If the applicant or recipient receives rent-free housing, but pays for utilities, the applicant or recipient must present a verifiable bill for utilities at that address, and a verifiable receipt for payment of any portion of that utility bill.

(d) Verified payments made directly to a housing provider on behalf of an applicant/participant for the entire amount of the rent and/or utilities, or rent-free housing, or housing received in exchange for work, shall be assigned an in-kind value as specified by the Income-in-Kind Chart and that value shall be deducted from the maximum monthly stipend for which that applicant/participant is eligible.

(e) Housing and/or meals provided to applicants and recipients who are unable to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing shall be valued as in-kind housing, utilities and/or meals as specified by the Income-In-kind Chart, and that value shall be deducted from the maximum monthly stipend for which that applicant or recipient is eligible.

(f) Nothing in this Section shall be construed as requiring an otherwise eligible applicant/participant to accept housing in a facility which is either the subject of a pending nuisance abatement proceeding before a duly authorized agency or department of the City and County or before a court of competent jurisdiction, or which therefore has been found to be a public nuisance pursuant to any provision of any San Francisco Municipal Code by a duly authorized agency or department of the City and County or by a court

of competent jurisdiction and which nuisance has not been abated. (Added by Ord. 150-98, App. 5/8/98; amended by Proposition N, 11/5/2002)

SEC. 20.76.4. ALTERNATIVE PAYMENT METHODS; DIRECT PAYMENTS TO ROOM AND BOARD FACILITIES PERMITTED.

In addition to the emergency aid provisions of this Article, payment for room, food expense, or both, up to the maximum PAES stipend amount, may at the applicant's/participant's option, be paid directly to any board and/or-care facility should the applicant/participant choose to reside, take her/his meals or have full room and board privileges at such facilities. The Executive Director may initiate such a program or payment arrangement, on either a pilot or continuing basis, by putting into effect the appropriate regulations. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.76.5. SPECIAL ALLOWANCES; TRANSPORTATION OUT OF THE CITY.

(a) The Department of Human Services may provide transportation and maintenance en route to a place out of the City and County where the applicant/participant will be cared for or her/his interests best served, provided the applicant/participant, but for fully meeting the residency requirement, is otherwise eligible and voluntarily enters into a signed contractual agreement regarding such transportation with the City and County of San Francisco. Said agreement shall contain a repayment provision permitting recoupment of the amount expended in providing such transportation at a rate not to exceed 10 percent of each stipend amount should the person provided transportation thereafter reapply and become eligible for PAES.

(b) Transportation under this Section shall be provided by the least expensive means available. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.76.6. EMPLOYER WAGE SUBSIDY—PAES PROGRAM.

(a) **Findings.** The Board of Supervisors in adopting this ordinance finds that providing the authority for the Department of Human Services

to establish a wage subsidy program as defined herein will promote the permanent employment of PAES participants.

(b) **Employer Wage Subsidy—Defined.**

For the purposes of this Section, "employer wage subsidy" means a payment from revenues appropriated for a PAES participant to an employer for a PAES participant who becomes employed through this program and is employed for at least 26 weeks and earns a minimum of \$800 per month in gross wage earnings.

(c) **Wage Subsidy—Payment Schedule.**

A wage subsidy payment shall only be issued to an employer by the Department of Human Services upon receipt of documentation of gross wage earnings paid to a participant of the program by the employer for the first 26 weeks of employment, except when the payment of a wage subsidy in two installments is approved by the Executive Director. A wage subsidy payment issued to an employer in two installments shall only be issued by the Department of Human Services upon receipt of documentation of gross wage earnings paid to the participant by the employer for 13 consecutive weeks of employment and the second payment shall only be issued upon receipt of documentation of gross wage earnings paid to the same participant by the employer for an additional 13 consecutive weeks of employment.

(d) **Amount of Subsidy.** The employer wage subsidy shall not exceed an amount that is 14 percent of the participant's monthly gross wage earnings and shall not exceed in any month the maximum amount of a PAES stipend for which the participant would otherwise be eligible. A wage subsidy shall not be paid to an employer for more than the first 26 weeks of employment. Participant "gross wage earnings" are defined for purposes of this Section as income received by the participant as payment for the participant's labor.

(e) **Authority.** The Department of Human Services may utilize an employer wage subsidy to encourage employers to hire qualified PAES participants as full-time employees. The Depart-

ment shall make reasonable efforts to coordinate with community agencies that provide job search services to implement these provisions.

(f) **Program Administration.** Prior to the Department's implementation of this authority, the Executive Director shall establish procedures and regulations for the proper administration of this authority. The regulations shall include a prohibition against the payment of a subsidy under this program for placing PAES participants in positions in which they would be replacing striking employees.

(g) **Report.** The Executive Director of the Department of Human Services shall report to the Human Services Commission about the results of the Department's implementation of the program one year from the effective date of this ordinance, and annually thereafter. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.77. CONTINUING ELIGIBILITY.

(a) Persons who meet the requirements for eligibility for PAES shall receive cash stipends pursuant to this Article. Participants are required to comply with all applicable provisions of this Article and the regulations promulgated thereunder. Participants who fail to comply with applicable provisions of this Article and the regulations promulgated thereunder without good cause may have their aid withheld and/or decreased and/or discontinued as set forth in Department regulations.

(b) No withholding, decrease, or discontinuance of aid shall occur unless the person to be affected has been advised of the possibility of such action by means of a Notice of Proposed Action and has been afforded the opportunity for a hearing to dispute the proposed action. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.77.1. PARTICIPANT AGREEMENT.

(a) Participants in PAES must enter into a written Participant Agreement which outlines the first phase of PAES activities with which the participant must comply. Such activities may include, but are not limited to: (1) supported

work experience; and/or (2) job search; and/or (3) group sessions or activities; and/or (4) any other appropriate activity, as determined by the Department, that leads to preparation of the PAES Plan; and (5) keeping an appointment to establish a PAES Plan upon the notification of the date and time of such an appointment. The maximum number of hours of activities, which would be considered "employment" under the Fair Labor Standards Act (29 U.S.C. §§ 201 et. seq.) and any applicable U.S. Department of Labor Guidelines, that the Department may require shall be the same amount as for General Assistance recipients, as calculated for General Assistance recipients under Section 20.58.6 of this Chapter.

(b) Participants who provide verification of a temporary physical or mental condition which prevents them from complying with the Participant Agreement as specified above may: (1) be temporarily exempted from those requirements, or (2) be required to participate in any appropriate activity that is likely to remedy the temporary physical or mental condition and lead to preparation of the PAES Plan.

(c) Failure to comply with the Participant Agreement shall be considered failure to meet continuing eligibility requirements. Such failure shall result in discontinuance from PAES, subject to the notice and administrative hearing provisions of this Article, and the imposition of a 60 day sanction. Failure to comply with the Participant Agreement is not subject to the Conciliation For PAES Plan Noncompliance provisions of this Article. (Added by Ord. 150-98, App. 5/8/98; Ord. 81-06, File No. 051924, App. 4/21/2006)

SEC. 20.77.2. PAES PLAN.

(a) On the date set in the Participant Agreement, participants in PAES must enter into a written PAES Plan that sets forth the activities and services that will assist the participant in obtaining paid employment. This plan shall be signed by the participant and the Department.

(b) This plan will include an evaluation of the participant's: (1) education; (2) employment history; (3) employment skills; (4) employment goals; (5) barriers to achieving those goals; (6) services necessary to remove those barriers; (7) participant tasks necessary to remove those barriers; and (8) the time frame in which services will be provided, and participant tasks will be completed. The activities set forth in the PAES plan may be performed concurrently or sequentially, as determined within the context of the plan.

(c) Compliance with all components of the PAES Plan, absent a determination of good cause for failure to so comply, is mandatory in order to continue to receive PAES services and the stipend. Such failure shall result in discontinuance from PAES, subject to the notice, conciliation, and administrative hearing provisions of this Article, and the imposition of a 90 day sanction. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.77.3. SANCTIONS.

(a) Failure to meet continuing eligibility requirements, absent a showing of good cause, other than compliance with the PAES Plan, shall result in the imposition of a 60 day sanction.

(b) Failure to comply with all the components of the PAES Plan shall result in the imposition of a 90 day sanction.

(c) Time spent serving PAES sanctions shall not apply in computing the time limit for PAES services specified in this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.77.4. CONCILIATION FOR PAES PLAN NONCOMPLIANCE.

(a) Thirty calendar days prior to the imposition of a sanction for failure, without good cause, to comply with any of the elements of the PAES plan, the Department shall issue a notice of PAES Plan Noncompliance.

(b) This notice shall inform the participant of: (1) the alleged instance(s), including date(s), of noncompliance with specific reference to the component(s) of the plan; (2) the date that the sanction will be imposed; and (3) shall instruct

the participant to attend an appointment with the Department within 20 mail delivery days of the notice, or to contact the Department by telephone within 20 mail delivery days.

(c) In order to avoid imposition of the sanction, the participant must either: (1) demonstrate good cause for failure(s) to comply with

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any component(s) of the PAES plan; or (2) agree to a conciliation plan to correct the specific compliance failure(s).

(d) Failure by the participant to respond to (1) the Notice of Noncompliance, or (2) demonstrate good cause, or (3) agree to a conciliation plan shall result in discontinuance from PAES, and the imposition of a sanction. Such a discontinuance is subject to the notice and hearing provisions of this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.77.5. GOOD CAUSE.

For purposes of this Article, where a participant is required to show "good cause" for not meeting one of her/his obligations or duties under this Article, good cause may be shown by evidence of any of the following: (1) verified hospitalization; (2) verified illness; (3) verified incarceration; (4) verified disability; or other good cause satisfactorily demonstrated to the Executive Director. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.78. TIMING OF PAES STIPENDS.

(a) Emergency Assistance. The Department may provide emergency assistance. The Executive Director of the Department of Human Services is authorized to contract with social service agencies for the provision of emergency assistance.

(b) Normal Payment Periods. The Executive Director is authorized to establish normal payment periods of either twice monthly or once monthly. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.79. TIME LIMITS.

(a) This program shall be limited to 27 months total lifetime of services. A participant may continue to receive an additional six months of services if the Executive Director determines that specific activities would be likely to lead to employment. However, there shall be no time limit as to receipt of the maximum monthly stipend for which a participant is eligible as long as that participant continues to meet all PAES program requirements.

(b) If at any time during the implementation of a participant's PAES Plan, the identified services necessary to remove the barriers to achieving employment goals are not available through no fault of the participant, the 27 month time limit, as set forth in Subsection (a) above, will be stayed for the same amount of time such services are not available. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.80. IMMEDIATE TERMINATION OF ELIGIBILITY.

Occurrence of the following events shall result in the immediate termination of eligibility for assistance under this Article: (1) receipt of SSI payments; (2) death of the participant; (3) applicant/participant request; (4) abandonment of County residency; or (5) institutionalization. Discontinuance of assistance due to the death of the participant, or at the request of the applicant/participant is subject to the notice provisions of Section 20.85(a); however, such discontinuances do not require 10 calendar day prior notice as specified in Section 20.85(b). All other discontinuances under this Section do require 10 calendar day prior notice as specified in Section 20.85(b). (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.81. CHANGES IN PAES STIPENDS.

(a) Changes in stipends shall be made when a PAES participant becomes eligible for a stipend in a different amount because of altered circumstances.

(b) A change in stipend shall be made effective with the next regular pay date following knowledge by the worker of circumstances warranting a change in stipend, in conformance with the notice and hearing requirements of this Article. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.82. LOST, FORGED OR STOLEN WARRANTS AND LOST OR STOLEN WARRANT PROCEEDS.

(a) Lost, forged, or stolen warrants may be replaced only in accordance with specific procedures adopted by the Department.

(b) If a warrant has been cashed by the participant and the money lost or stolen, no replacement of the warrant or issuance of orders shall be permitted. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.83. INELIGIBILITY FOR GENERAL ASSISTANCE, CALM, SSIP OR OTHER COUNTY-FUNDED ASSISTANCE.

Participants of PAES are not eligible for General Assistance, CALM, SSIP or any other County-funded cash assistance programs. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.84. FAIR ADMINISTRATION; DISCLOSURES; OVERPAYMENT.

The Department shall administer this program fairly to the end that all eligible persons who apply for assistance shall receive stipends promptly, with due consideration for the needs of the applicant/participant and the safeguard of public funds.

(a) Any applicant for, or participant or payee of, stipends under this Article shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility, continuing eligibility and stipend amount.

(b) Any applicant for, or participant or payee of, stipends under this Article shall be responsible for reporting accurately and completely all facts required of him or her pursuant to Subdivision (a) and for reporting promptly any changes of those facts.

(c) Any person who makes full and complete disclosure of those facts as explained to him or her pursuant to Subdivision (a) is entitled to rely upon the stipend paid as being accurate, and the warrant he or she receives as correctly reflecting the stipend award except as provided in Subdivisions (d), (e), (f).

(d) Overpayment due to administrative error or negligent failure to report facts required by this Article or Department regulations may be recouped in accordance with the provisions of

Section 20.72(q) governing recoupment in the absence of participant fraud, until collected in full, following discovery of overpayment.

(e) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts required by this Article or department regulations shall be recouped in accordance with the provisions of Section 20.72(q) governing recoupment upon an administrative determination of participant fraud, until collected in full, following discovery of overpayment.

(f) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts as required by this Article or department regulations shall result in immediate discontinuance of the PAES stipend subject to the administrative hearing procedures under this Article. The case shall be referred to the Special Investigation Unit of the Department of Human Services. Any stipends paid under such circumstances shall be offset against any future stipends as set forth in Section 20.72(q). (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.85. NOTICE OF PROPOSED ACTION.

(a) The Department shall issue a Notice of Proposed Action whenever it intends to deny, withhold, decrease or discontinue PAES stipends. That notice shall state with reasonable particularity the legal and factual basis for the proposed action.

(b) Proposed Notices of Action regarding withholding, reduction, or discontinuance from PAES shall be hand-delivered or mailed at least 10 calendar days prior to the effective date of the proposed action. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86. HEARINGS.

(a) An applicant for, or a participant of PAES, may challenge any denial, withholding, decrease or discontinuance by requesting an administrative hearing.

(b) A request for an administrative hearing must be made to the Department within seven calendar days of the date of hand-delivery of, or 10 calendar days from the date of mailing of the Notice of Proposed Action, or within three work days of the effective date of the action. Hearing requests that are not made in accordance with the time requirements shall be denied unless the applicant or participant can establish good cause for failure to make a timely request. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.1. HEARING; NOTICE OF HEARING; WHEN HELD.

(a) After a hearing has been requested, a time and place for the hearing shall be established. Notice shall be given to the applicant or participant indicating the day, date, time, and place of the hearing. In no event shall a hearing date be scheduled for a time less than five days after the Department's receipt of a request, unless the applicant makes a knowing and intelligent waiver of his or her right to a record review.

(b) Where an applicant for PAES is denied aid, a hearing shall be calendared within seven days of the date of the hearing request.

(c) All hearings shall be held within 30 calendar days of the request therefor. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.2. STIPEND PAID PENDING.

A PAES participant who makes a timely request for an administrative hearing shall continue to receive her/his stipend pending the hearing decision. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.3. IMPARTIAL HEARING OFFICER.

The Executive Director shall designate as an impartial hearing officer a person who is not involved in the administration of the PAES Program. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.4. HEARING; HEARING RIGHTS.

The applicant or participant shall be advised in the Notice of Proposed Action of applicant's or

participant's rights to counsel or other representative, to review pertinent records and regulations at least five working days prior to the hearing, to present testimony and documentary evidence, to cross-examine all witnesses, to have the proceedings tape-recorded, and to have a translator provided for the hearing if the applicant or participant is not proficient in English. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.5. INFORMALITY, EVIDENCE, APPEARANCE AND COUNSEL.

The hearing shall be conducted in an impartial and informal manner. All evidence shall be submitted under oath or affirmation. The hearing officer is not bound by the rules of evidence or procedures applicable to judicial proceedings. The applicant/participant shall attend the hearing in person and may be represented by counsel or a representative. While the applicant/participant may or may not be represented by counsel or a representative, the client must appear in order for the hearing to be held. However, where the applicant/participant establishes good cause for nonattendance prior to the hearing under Section 20.77.5, counsel or a representative may appear on behalf of the applicant/participant. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.6. HEARING DECISION.

The hearing officer shall render a written decision within seven calendar days of the hearing indicating factual findings and grounds for the decision. Such decision shall be based solely upon evidence presented at the hearing and specifically state the facts upon which it was based, the authority relied upon and any other reasons for the decision. Such decision shall be mailed to the applicant or participant. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.86.7. HEARING; FINALITY; EFFECT OF NONAPPEARANCE.

(a) The result of all hearings are considered final and there is no further right of administrative appeal.

(b) When the applicant/participant does not appear for the scheduled hearing, it is presumed that the applicant/participant ceases to contest the decision. The withholding, decrease, denial, discontinuance, and/or recoupment of overpayments of aid will, therefore, be effected. The applicant or participant may, for good cause shown, make a written request, or oral request as specified in the Executive Director's regulations, for a second hearing within 15 days of the scheduled date for the first hearing.

Such request must specify the good cause for nonattendance at the first hearing. This provision is satisfied by evidence of any of the following: (1) verified hospitalization; (2) verified illness; (3) verified incarceration; (4) verified disability or (5) other good cause satisfactorily shown to the Executive Director. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.87. FRAUD IN OBTAINING STIPENDS.

Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by this Article or Department regulations, obtained stipends under this Article, the matter shall be referred to the District Attorney's office for appropriate action.

Further, upon the first discontinuance of stipend payments within a 24 month period due to false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by the Article or Department regulations, an applicant or participant shall be ineligible for stipends for a period of 90 days.

Upon the second such discontinuance within a 24 month period, the applicant or participant shall be ineligible for stipends for a period of 120 days.

Upon the third, or additional, such discontinuance within a 24 month period, the applicant or participant shall be ineligible for stipends for a period of 150 days. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.88. RECORDS; CONFIDENTIALITY.

All PAES records shall be confidential and shall not be opened to examination or inspection except upon written waiver by the applicant/participant. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.89. RECORDS; DESTRUCTION OF.

All inactive case records that are over five years old may be destroyed. All records involving closed PAES cases may be destroyed after five years. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.90. AUTHORITY TO TERMINATE THE PROGRAM.

The Board of Supervisors of the City and County of San Francisco has complete discretion and authority to terminate PAES at any time, for any reason. In the event that PAES is terminated, all PAES applicants and participants shall be eligible to apply for General Assistance, SSIP, or CALM, whichever is applicable, in accordance with the rules and regulations of those programs.

SEC. 20.91. SEVERABILITY.

If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.92. LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.93. OPERATIVE DATE.

This Article is to become effective no sooner than June 1, 1998. (Added by Ord. 150-98, App. 5/8/98)

SEC. 20.94. FUNDING.

A baseline appropriation for housing and related services provided as in-kind aid shall be established using the City and County of San Francisco FY 2002-2003 Annual Appropriation Ordinance and any supplemental appropriations for the amount of cash aid payments to applicants and recipients who declare themselves to be homeless. In subsequent fiscal years, this baseline amount shall be appropriated to the Department of Human Services to fund housing and related services for homeless adults without dependents. This funding may be used to support, but shall not be limited to, some or all of the following: hotel master lease programs, permanent supportive housing, improvements of conditions in existing shelters, expansion of shelter capacity, mental health and substance abuse treatment, outreach, a fund for rental deposits, SSI advocacy programs, rep-payee services, case management and meals for the homeless population through direct services and/or contracts. (Added by Proposition N, 11/5/2002)

SEC. 20.95. EVALUATION.

The provision of in-kind aid is to be evaluated by the Office of the Controller of the City and County of San Francisco every three years for program effectiveness and cost efficiency. (Added by Proposition N, 11/5/2002)

**SEC. 20.96. OPERATIVE DATE OF
AMENDMENTS.**

The provisions of this amendment, Sections 20.76 (b), (c), (j), (k), 20.76.3(a), (b), (c), (e); 20.94; and 20.95 shall become operative on or before July 1, 2003. (Added by Proposition N, 11/5/2002)

San Francisco - Administrative Code

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ARTICLE X: CASH ASSISTANCE LINKED TO MEDI-CAL (CALM)

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| Sec. 20.100. Title. | Sec. 20.112. Lost, Forged or Stolen Warrants and Lost or Stolen Warrant Proceeds. |
| Sec. 20.101. Purpose and Intent. | Sec. 20.113. Ineligibility for General Assistance, PAES, SSIP or Other County-Funded Assistance. |
| Sec. 20.102. Definitions. | Sec. 20.114. Discontinuance From the Medi-Cal Program. |
| Sec. 20.103. Principles. | Sec. 20.115. Notice of Proposed Action. |
| Sec. 20.104. Administration. | Sec. 20.116. Hearings. |
| Sec. 20.105. Eligibility. | Sec. 20.116.1. Hearing; Notice of Hearing; When Held. |
| Sec. 20.105.1. Residency. | Sec. 20.116.2. CALM Payments Pending. |
| Sec. 20.105.2. Labor Dispute. | Sec. 20.116.3. Impartial Hearing Officer. |
| Sec. 20.105.3. Rebuttable Presumption of Ineligibility—Current Income or Expenses. | Sec. 20.116.4. Hearing; Hearing Rights. |
| Sec. 20.105.4. Allowable Real Property. | Sec. 20.116.5. Informality, Evidence, Appearance and Counsel. |
| Sec. 20.105.5. Allowable Personal Property. | Sec. 20.116.6. Hearing Decision. |
| Sec. 20.105.6. Exempt Income or Resources. | Sec. 20.116.7. Hearing; Finality; Effect of Nonappearance. |
| Sec. 20.105.7. Exemption for Terminal Illness. | Sec. 20.117. Fair Administration; Disclosures; Overpayments. |
| Sec. 20.105.8. Ineligibility of Individuals Who are Members of a CalWORKs Assistance Unit. | Sec. 20.118. Fraud in Obtaining Payments. |
| Sec. 20.105.9. Ineligibility of Fleeing Felons. | Sec. 20.119. Records; Confidentiality. |
| Sec. 20.105.10. Photo Identification. | Sec. 20.120. Records; Destruction of. |
| Sec. 20.105.11. Fingerprint Information. | Sec. 20.121. Authority to Terminate the Program. |
| Sec. 20.105.12. Reimbursement Agreement. | Sec. 20.122. Severability. |
| Sec. 20.106. CALM Payments. | Sec. 20.123. Limited to Promotion of General Welfare. |
| Sec. 20.106.1. Earned Income Disregard. | Sec. 20.124. Operative Date. |
| Sec. 20.106.2. Housing. | Sec. 20.125. Funding. |
| Sec. 20.106.3. Alternative Payments Methods; Direct Payments to Room and Board Facilities Permitted. | Sec. 20.126. Evaluation. |
| Sec. 20.106.4. Special Allowances; Transportation Out of the City. | Sec. 20.127. Operative Date of Amendments. |
| Sec. 20.107. Continuing Eligibility. | |
| Sec. 20.107.1. Compliance With Medi-Cal Regulations. | |
| Sec. 20.108. Timing of CALM Payments. | |
| Sec. 20.109. Time limits. | |
| Sec. 20.110. Immediate Termination of Eligibility. | |
| Sec. 20.111. Changes in CALM Payments. | |

Editor's Note:

On November 4, 2003, the electorate adopted Proposition 1, which designated new provisions as Sections 20.100 through 20.107. Because this article already contained provisions with those section num-

bers, the editor has codified Proposition I as Chapter 20, Article V, Sections 20.53-100 through 20.53-107.

SEC. 20.100. TITLE.

This Article shall be known as the "Cash Assistance Linked to Medi-Cal" or "CALM." (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.101. PURPOSE AND INTENT.

The purpose of this program is to provide cash payments to those individuals, and their spouses and minor children, who have been determined to be eligible for Medi-Cal, the State health care program as set forth in California Welfare and Institutions Code Sections 14,000 et seq., on the basis of being aged, blind or disabled, and who meet specific financial criteria, but who are not eligible for federal disability payments from the Social Security Administration (SSI benefits), and/or State supplemental disability payments (SSP).

It is the intent of the Board of Supervisors of the City and County of San Francisco (City) that only individuals who receive Medi-Cal, because they have been determined to be aged, or disabled by the federal and/or State government authorities under the Disability Evaluation Determination (DED) guidelines, Title II or Title XVI of the Social Security Act, 42 U.S.C. Section 301, et seq., or successor federal and/or State law shall receive a cash supplement under this Article. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.102. DEFINITIONS.

For purposes of this Article:

(a) "Applicant" means a person who is in the process of applying for benefits under this Article.

(b) "Assistance" means services and/or cash payments.

(c) "CalWORKs" means the California Work Opportunity and Responsibility to Kids as defined Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or any successor program.

(d) "Decrease" means any reduction in a recipient's current cash payment amount under this Article.

(e) "Denial" means a determination, based on a CALM application, that the applicant is not eligible for CALM.

(f) "Department" means the Department of Human Services.

(g) "Discontinuance" means the termination of a recipient's assistance.

(h) "Electronic benefit transfer" means a method of transferring benefits through a centralized computer system so that an applicant/recipient may obtain her/his benefits at facilities such as automated teller machines (ATM) and point-of-sale (POS) terminals using an access device such as a magnetic stripe plastic card. "Electronic benefit transfer" includes direct deposits.

(i) "Eligible for Medi-Cal" means that an applicant/recipient is a current Medi-Cal beneficiary for reasons of being aged or disabled.

(j) "Executive Director" means the Executive Director of the Department of Human Services.

(k) "Family budget unit" means a Medi-Cal Family Budget Unit as defined in Title 22 of the California Code of Regulations, Sections 50371 et seq.

(l) "General Assistance" means the General Assistance Program as set forth under Article VII of this Chapter of the San Francisco Administrative Code (S.F. Adm. C. §§ 20.55, et seq.).

(m) The word "may" means the provision is permissive.

(n) "Medi-Cal" means the Medi-Cal Program as set forth in California Welfare and Institutions Code Sections 14000 et seq.

(o) "PAES" means the Personal Assisted Employment Services Program as set forth under Article IX of this Chapter.

(p) "Recipient" means a person who is receiving assistance under this program.

(q) "Recoupment" means the collection of past overpayments under the CALM Program by deducting from current payments not more than

10 percent of the current payment amount absent an administrative determination of recipient fraud and not more than 40 percent with an administrative determination of recipient fraud and an administrative evaluation of the recipient's current ability to make repayments.

(r) "Residing in an institution" shall mean that the applicant/recipient is staying in a facility that provides housing and three meals a day.

(s) The word "shall" means the provision is mandatory.

(t) "SSA" means the Social Security Administration.

(u) "SSI" means Supplemental Security Income.

(v) "SSIP" means the Supplemental Security Income Pending Program as set forth under Article XI of this Chapter.

(w) "State" means the State of California.

(x) "SSI/SSP" means Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled as defined in the Welfare and Institutions Code Section 12000, et seq.

(y) "TANF" means Temporary Assistance to Needy Families as defined in Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(z) The word "withholding" means the retention of payments. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.103. PRINCIPLES.

Assistance is to be administered in a manner which is consistent with the purposes of this program and which respects individual privacy and personal dignity:

(a) CALM is to be administered promptly and humanely, without discrimination on account of race, sex, sexual orientation, religion or political affiliation.

(b) CALM is to be administered so as to encourage self-respect, self-reliance and the desire to be a good citizen, useful to the community.

(c) CALM is to be administered with courtesy, consideration and respect and without attempting to elicit any unnecessary information.

(d) Duties should be performed in such a manner as to secure for every applicant or recipient the assistance to which s/he is eligible.

(e) There is to be no question, inquiry or recommendation relating to the political or religious opinions or affiliations of any applicant or recipient.

(f) CALM is to be administered in the most cost-effective manner possible. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.104. ADMINISTRATION.

(a) This program shall be administered by the Department of Human Services. The Executive Director shall establish the rules and regulations, consistent with this Article, for the proper administration of CALM.

(b) In actual emergencies, the Executive Director of the Department of Human Services may make exceptions to this Article pending action by the Board of Supervisors. Such action shall be reported to the Board of Supervisors within five working days. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105. ELIGIBILITY.

(a) In order to be eligible to receive CALM, an applicant must submit, to the Department, a complete Medi-Cal application, as required by State law. Upon determination that the applicant is eligible for Medi-Cal benefits for the aged, blind or disabled, based upon State eligibility criteria, the applicant, and her/his spouse, and/or minor children, will be eligible for CALM.

(b) An individual serving a sanction for fraud under any County-funded indigent assistance program under this Chapter is ineligible to receive CALM until that sanction period is completed.

(c) All applicants/recipients, and all members of the family budget unit are required to apply for, and pursue receipt of payment(s) from any and all federal, State, and/or private means of assistance for which they may be eligible as

directed by the Department. This includes, but is not limited to: (1) Unemployment Insurance Benefits; (2) Worker's Compensation Insurance; (3) SSI; (4) retirement benefits, and (5) any other insurance or disability payments. Failure to apply for, and pursue receipt of, any such assistance to which an applicant/recipient, or any member of the family budget unit, may be eligible shall be considered to be a failure to meet continuing eligibility requirements of this Article.

(d) Individuals residing in an institution are not eligible to receive assistance under this Article.

(e) Applicants may be required to attend group orientation session(s), and failure to do so shall be grounds for denial of assistance. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.1. RESIDENCY.

(a) Applicants for CALM must reside in the City and County of San Francisco for 15 continuous days prior to the date of application for CALM payments. Residence in the City and County of San Francisco is established by physical presence and intent to reside, which is satisfactorily demonstrated by the applicant.

(b) Eligibility for CALM will terminate immediately upon abandonment of residency in the City and County of San Francisco. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.2. LABOR DISPUTE.

Unemployment due to a bona fide strike, lockout, or other labor dispute shall not affect eligibility provided that the applicant meets all other eligibility requirements. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.3 REBUTTABLE PRESUMPTION OF INELIGIBILITY—CURRENT INCOME OR EXPENSES.

Verified paid income, or expenses which exceed the otherwise eligible applicant/recipient's total monthly income and/or assets, during month of application or a current month of eligibility

shall create a rebuttable presumption of ineligibility for CALM. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.4. ALLOWABLE REAL PROPERTY.

(a) The applicant shall transfer or grant to the City and County of San Francisco any interest which the applicant has in any real property as security for the funds expended for assistance.

(b) An applicant or recipient of CALM may retain real property used as her/his home, provided that the applicant's or recipient's net monthly housing expense does not exceed the otherwise eligible applicant/recipient's total monthly income and/or assets. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.5. ALLOWABLE PERSONAL PROPERTY.

No payments under this Article shall be made to any person who has not exhausted all assets and resources available to such person, except for cash assets, savings and/or checking accounts, the total of which does not exceed the current monthly Medi-Cal maximum assets amount for the family budget unit. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.6. EXEMPT INCOME OR RESOURCES.

For the purpose of this Article:

(a) Personal property, income or resources shall not include income from relocation payments to individuals receiving assistance under this Article being displaced by a redevelopment agency.

(b) Retirement benefits may be retained upon determination by the Executive Director or his or her designee that the applicant or recipient will be reemployed in the near future and that such employment is contingent upon the retirement fund not being withdrawn.

(c) Any verified loans made to a recipient, or to an applicant in the month of application, or one month immediately prior to application, for the purpose of enabling that recipient or appli-

cant to pay his or her rent, or for the purpose of payment of first and last month's rent and any lawful rental deposit, shall not be considered income or resources available to that recipient or applicant.

(d) Income tax refunds, including the Earned Income Tax Credit (EITC), issued to the applicant or recipient shall not be considered as income or resources available to the applicant or recipient.

(e) Payments made to the applicant or recipient under the Foster Care or FSET/GATES programs shall not be considered as income or resources available to the applicant or recipient.

(f) SSI/SSP benefits and resources of a member of the CALM family shall not be considered as income or resources available to the applicant or recipient.

(g) The portion of any student grants or loans that is paid directly to the educational institution for tuition, and/or fees, and/or books. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.7. EXEMPTION FOR TERMINAL ILLNESS.

Terminally ill applicants with medical verification that such applicant has a remaining life expectancy of six months or less are exempt from:

(a) Providing documentation of legal status in the United States;

(b) The provisions of this Article regarding the cash value of a vehicle, provided that the applicant can demonstrate that such vehicle is necessary to transport the applicant to and from medical treatment, and that he or she is physically and/or mentally unable to use public transportation;

(c) The provisions of this Article regarding the requirement to obtain and present any photo identification.

Such applicants shall meet all other eligibility requirements.

There shall be no time limit to the duration of eligibility for CALM authorized under this Section. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.8. INELIGIBILITY OF INDIVIDUALS WHO ARE MEMBERS OF A CALWORKS ASSISTANCE UNIT.

(a) Any individual who is a member of an assistance unit receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 of the California Welfare and Institutions Code (CalWORKs), shall not be eligible for CALM under this Article if the individual has been determined ineligible for CalWORKs pursuant to Welfare and Institutions Code Section 11251.3.

(b) Any individual who is not eligible for aid under CalWORKs pursuant to Welfare and Institutions Code Section 11454(b) shall not be eligible for CALM until all of the children of the individual on whose behalf aid was received, and who live in the home with the individual, are 18 years of age or older.

(c) Any individual who is receiving aid under CalWORKs on behalf of an eligible child, but who is either ineligible for aid or whose needs are not otherwise taken into account in determining the amount of aid to the family pursuant to Section 11450 of the Welfare and Institutions Code due to the imposition of a sanction or penalty, shall not be eligible for aid or assistance under this part.

(d) The Executive Director, in her/his sole discretion may grant an exception to this Section. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.9. INELIGIBILITY OF FLEEING FELONS.

(a) An individual shall not be eligible for CALM if he or she is:

Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States

grants a pardon with respect to the conduct.
(Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.10. PHOTO IDENTIFICATION.

(a) Each applicant shall present proof of identity and a verifiable social security number. The following forms of photo identification shall be accepted:

(1) California Department of Motor Vehicles Driver's License;

(2) California Department of Motor Vehicles Identification Card;

(3) Current United States Passport provided that such Passport contains a photo taken of applicant/recipient when s/he was at least 18 years of age;

(4) Current Immigration and Naturalization identification, provided that such identification contains a photo which was taken of the applicant/recipient when s/he was at least 18 years of age and was taken within 10 years prior to the date of application of the applicant/recipient;

(5) Other forms of identification which are acceptable under Medi-Cal regulations.

(b) In addition, the Department may require applicants and recipients to obtain and present Department-issued identification. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.11. FINGERPRINT INFORMATION.

All applicants for, and recipients of, CALM shall be fingerprinted at the Department or at a Department-approved facility in accordance with procedures established by the Executive Director. These records shall be used exclusively to prevent multiple payments under this Article or any other federal, State or County assistance program. The Executive Director is authorized to create, by regulation, exemptions from this requirement based on physical or mental disability. The refusal of an applicant or recipient to comply with the fingerprint procedures shall be grounds for denial of, or discontinuance from, CALM.

Fingerprints gathered under this Section are subject to all applicable federal and State laws governing the confidentiality of information regarding applicants for, or recipients of, public benefits. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.105.12. REIMBURSEMENT AGREEMENT.

All applicants for CALM shall sign an Interim Assistance Reimbursement Agreement, in the event that the applicant/recipient is subsequently awarded SSI. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.106. CALM PAYMENTS.

(a) For each eligible individual or for each eligible family budget unit of two or more persons who qualify for assistance under the CALM Program, the maximum monthly payment amount which recipients shall receive is listed below.

MAXIMUM CALM PAYMENT AMOUNT	
Single Individual	\$ 395
Number of Eligible Persons in Same Family	
2 Persons.....	\$ 649
3 Persons.....	804
4 Persons.....	955
5 Persons.....	1,089
6 Persons.....	1,223
7 Persons.....	1,343
8 Persons.....	1,464
9 Persons.....	1,586
10 Persons	1,723

In the case of more than 10 persons in a family budget unit, an additional \$25 each month shall be paid for each additional person in the family budget unit. For family budget units in which members receive cash payments from more than one federal, State or County assistance program, except for SSI/SSP, the total aid payment shall consist of the sum of each individual's proportionate share of the aid payment for a family budget unit of the same size within each program to which each member is eligible.

(b) The maximum monthly CALM payment for which an applicant is eligible shall be the maximum monthly CALM payment prorated as of the eligibility determination date, minus any nonexempt cash available to the applicant during that calendar month, minus the fair market value of any nonexempt personal property available to the applicant during that calendar month, and minus the value of any prorated in-kind housing, utilities and/or meals available or provided to the applicant. A rent payment, retroactive to the first of the month in which eligibility is determined, may be authorized to prevent eviction from existing housing.

(c) The maximum monthly CALM payment for which a recipient is eligible shall be the maximum CALM payment minus any nonexempt cash received from sources other than CALM which is available to the recipient during the month for which assistance is paid, minus the fair market value of any nonexempt personal property which is, or will be, available to the recipient during the month for which assistance is paid, and minus the value of any in-kind housing, utilities and/or meals available or provided to the applicant.

(d) No CALM payment shall be issued for less than \$5.00.

(e) CALM may be provided in the form of vouchers, checks, two-party checks, warrants, electronic benefit transfers, in-kind benefits, and/or through third party contracts.

(f) CALM payments may be made payable only to the recipient or, upon the recipient's written authorization, to the recipient and a designated co-payee, or to a representative payee.

(g) CALM payments may be mailed directly to the recipient or to the designated representative payee. CALM payments may be made by electronic benefit transfer. CALM payments may be picked up at a location designated by the Department. CALM payments shall not be mailed to a post office box, a mail receiving service, or to an address outside the City and County of San Francisco, except upon specific authorization of the Executive Director.

(h) The Maximum CALM Payment Amounts listed in Section 20.106(a) of this Article shall be increased by any annual percentage cost of living increase to the Maximum Aid Payment, and according to the same schedule, if such an increase is implemented by the State of California in the TANF/CalWORKs program.

(i) Applicants and recipients are required to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing. Self-declared homeless applicants and recipients shall receive in-kind benefits for housing, which includes utilities and meals. If in-kind benefits are not available, such applicants and recipients shall receive the income-in-kind value of housing, utilities, and/or meals, whichever is not available, if otherwise eligible for these amounts. Failure to comply with the rules of a housing program that results in ejection from that housing program will be considered failure to satisfy the requirements for continuing eligibility for aid and will result in discontinuance from CALM, subject to the notice and hearing provisions of this Article.

(j) A special allowance of up to \$59.00 per month shall be made available to any recipient when the income-in-kind value of housing, and/or utilities, and/or meals provided to that recipient exceeds the maximum monthly payment for which that recipient is eligible. If such income-in-kind value does not exceed the maximum monthly payment for which that recipient is eligible, but allows for less than \$59.00 cash per month, that recipient shall receive an amount that, when added to the maximum monthly payment for which that recipient is eligible, equals \$59.00 cash per month. This section shall not affect the collection of overpayments due to fraud, negligent failure to report facts or administrative error as set forth in this Article. (Added by Ord. 149-98, App. 5/8/98; amended by Proposition N, 11/5/2002; Ord. 93-07, File No. 070208, App. 4/27/2007)

SEC. 20.106.1. EARNED INCOME DISREGARD.

(a) The Executive Director of the Department of Human Services may establish an Earned Income and Asset Disregard Program for recipi-

ents who are employed. The Earned Income and Asset Disregard Program shall provide for disregarding a certain amount of gross income which a recipient earns as wages and savings derived therefrom when determining a recipient's CALM eligibility and grant amount.

(b) The total amount of gross income disregarded shall not exceed the sum of the following amounts: (1) all of the first \$200 of recipient gross wage earnings; (2) two-thirds of the next \$150 of recipient gross wage earnings; (3) one-half of the next \$150 of recipient gross wage earnings; (4) one-third of the next \$150 of recipient gross wage earnings; and (5) one-fifth of the next \$150 of recipient gross wage earnings. All recipient gross wage earnings above \$800 shall be offset on a dollar-for-dollar basis against the grant amount to which a recipient would otherwise be entitled.

(c) In addition, for recipients in this program, up to \$2,000 of recipient savings derived from the recipient's gross wage earnings shall be disregarded during the individual recipient's participation in this program and for up to three months thereafter.

(d) If, as a result of retrospective budgeting, a recipient's total currently available financial resources in a month including her/his adjusted CALM grant, wages, and savings are less than the maximum CALM grant, the recipient shall be eligible for a grant supplement in the form of a rental expense voucher for unpaid rent in that month and up to \$50 in cash so that the recipient's currently available financial resources may total up to the maximum CALM grant amount. This grant supplement is available a maximum of three times per year for program recipients and is not available to recipients who quit a job without good cause.

(e) Recipient gross wage earnings are defined for purposes of this Section as any income received by the recipient as payment for a recipient's labor. All other recipient income and assets shall continue to be offset on a dollar-for-dollar basis when calculating the grant amount to which a recipient is otherwise eligible. For individuals participating in this program, the

CALM grant amount shall be adjusted for gross wage earnings on the basis of retrospective budgeting in the month following the recipient's receipt of wage income. Verified expenses which exceed the total sum of a recipient's grant, wages, and savings in any given month create a rebuttable presumption of ineligibility for assistance. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.106.2. HOUSING.

(a) "Housing" shall include, but not be limited to, single occupancy residential hotels, master lease rooms, transitional housing, supportive housing programs, residential treatment facilities, shelter.

(b) There shall be no reduction in the CALM payment for which an applicant/recipient is eligible because she/he shares housing with others who are not members of the applicant's family budget unit as defined under this Article. All applicants/recipients shall be required to present a verifiable rent receipt. If the applicant/recipient is not the owner or prime lessee of the premises, a verifiable rent receipt signed by the owner or prime lessee may provide evidence of the applicant's/recipient's place of residence and monthly share of housing costs.

(c) When an applicant obtains rent-free housing, such housing shall be valued according to Value of Income-in-Kind Chart set forth under Title 22 of the California Code of Regulations, Section 50511 (the "Income-in-Kind Chart"), rather than at fair market value. The value of the rent-free housing, which is presumed to include utilities, as determined under the Income-in-Kind Chart, shall be deducted from the maximum monthly payment amount. If the applicant or recipient receives rent-free housing, but pays for utilities, the applicant or recipient must present a verifiable bill for utilities at that address, and a verifiable receipt for payment of any portion of that utility bill.

(d) Verified payments made directly to a housing provider on behalf of an applicant or recipient for the entire amount of the rent and/or utilities, or rent-free housing, or housing received in exchange for work, shall be assigned an

in-kind value as specified by the Income-in-Kind Chart and that value shall be deducted from the maximum monthly payment for which that applicant or recipient is eligible.

(e) Housing and/or meals provided to applicants and recipients who are unable to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing shall be valued as in-kind housing, utilities and/or meals as specified by the Income-In-Kind Chart, and that value shall be deducted from the maximum monthly grant for which that applicant or recipient is eligible.

(f) Nothing in this Section shall be construed as requiring an otherwise eligible applicant or recipient to accept housing in a facility which is either the subject of a pending nuisance abatement proceeding before a duly authorized agency or department of the City and County or before a court of competent jurisdiction, or which theretofore has been found to be a public nuisance pursuant to any provision of any San Francisco Municipal Code by a duly authorized agency or department of the City and County or by a court of competent jurisdiction and which nuisance has not been abated. (Added by Ord. 149-98, App. 5/8/98; amended by Proposition N, 11/5/2002)

SEC. 20.106.3. ALTERNATIVE PAYMENT METHODS; DIRECT PAYMENTS TO ROOM AND BOARD FACILITIES PERMITTED.

In addition to the emergency aid provisions of this Article, payment for room, food expense, or both, up to the CALM Grant Amount, may at the applicant's/recipient's option, be paid directly to any board and/or care facility should the applicant/recipient choose to reside, take her/his meals or have full room and board privileges at such facilities. The Executive Director may initiate such a program or payment arrangement, on either a pilot or continuing basis, by putting into effect the appropriate regulations. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.106.4. SPECIAL ALLOWANCES; TRANSPORTATION OUT OF THE CITY.

(a) The Department of Human Services may provide transportation and maintenance en route to a place out of the City and County where the applicant/recipient will be cared for or her/his interests best served, provided the applicant/recipient, but for fully meeting the residency requirement, is otherwise eligible and voluntarily enters into a signed contractual agreement regarding such transportation with the City and County of San Francisco. Said agreement shall contain a repayment provision permitting recoupment of the amount expended in providing such transportation at a rate not to exceed 10 percent of each payment amount should the person provided transportation thereafter reapply and become eligible for CALM.

(b) Transportation under this Section shall be provided by the least expensive means available. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.107. CONTINUING ELIGIBILITY.

(a) Persons who meet the requirements for eligibility for CALM shall receive cash payments pursuant to this Article. Recipients are required to comply with all applicable provisions of this Article and the regulations promulgated thereunder. Recipients who fail to comply with applicable provisions of this Article and the regulations promulgated thereunder may have their assistance withheld and/or decreased and/or discontinued as set forth in Department regulations.

(b) No withholding, decrease, or discontinuance of assistance shall occur unless the person to be affected has been advised of the possibility of such action by means of a Notice of Proposed Action and has been afforded the opportunity for a hearing to dispute the proposed action. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.107.1. COMPLIANCE WITH MEDI-CAL REGULATIONS.

Continuing eligibility for CALM shall be dependent upon continuing eligibility for Medi-Cal benefits for the aged or disabled. All recipients of

CALM payments must comply with all applicable Medi-Cal regulations. Termination of Medi-Cal eligibility terminates eligibility for CALM. Any individual who is no longer eligible for CALM may apply for General Assistance, PAES, SSIP or any other federal, State or County-funded cash assistance program in accordance with the rules and regulations of that program. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.108. TIMING OF CALM PAYMENTS.

(a) **Emergency Assistance.** The Department may provide emergency assistance. The Executive Director of the Department of Human Services is authorized to contract with social service agencies for the provision of emergency assistance.

(b) **Normal Payment Periods.** The Executive Director is authorized to establish normal payment periods of either twice monthly or once monthly. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.109. TIME LIMITS.

There shall be no time limit to the receipt of CALM payments. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.110. IMMEDIATE TERMINATION OF ELIGIBILITY.

Occurrence of the following events shall result in the immediate termination of eligibility for assistance under this Article: (1) receipt of SSI payments; (2) death of the recipient; (3) applicant/recipient request; (4) abandonment of County residency; (5) institutionalization; or (6) termination of Medi-Cal eligibility. Discontinuance of assistance due to the death of the recipient, or at the request of the applicant/recipient is subject to the notice provisions of Section 20.115(a); however, such discontinuances do not require 10 calendar day prior notice as specified in Section 20.115(b). All other discontinuances under this Section do require 10 calendar day prior notice as specified in Section 20.115(b). (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.111. CHANGES IN CALM PAYMENTS.

(a) Changes in cash payments shall be made when a CALM recipient becomes eligible for a payment in a different amount because of altered circumstances.

(b) A change in payment shall be made effective with the next regular pay date following knowledge by the worker of circumstances warranting a change in payment, in conformance with the notice and hearing requirements of this Article. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.112. LOST, FORGED OR STOLEN WARRANTS AND LOST OR STOLEN WARRANT PROCEEDS.

(a) Lost, forged, or stolen warrants may be replaced only in accordance with specific procedures adopted by the Department.

(b) If a warrant has been cashed by the recipient and the money lost or stolen, no replacement of the warrant or issuance of orders shall be permitted. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.113. INELIGIBILITY FOR GENERAL ASSISTANCE, PAES, SSIP OR OTHER COUNTY-FUNDED ASSISTANCE.

Recipients of CALM payments are not eligible for General Assistance, PAES, SSIP or any other County-funded cash assistance programs. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.114. DISCONTINUANCE FROM THE MEDI-CAL PROGRAM.

If a CALM recipient who has been discontinued from Medi-Cal decides to appeal that action, and continues to receive Medi-Cal benefits pending that appeal, that individual shall also continue to receive CALM payments pending the final administrative decision regarding discontinuance of Medi-Cal benefits. If the discontinuance from Medi-Cal is upheld, the Department may not collect any CALM payments pending, unless ineligibility for Medi-Cal is due to fraud. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.115. NOTICE OF PROPOSED ACTION.

(a) The Department shall issue a Notice of Proposed Action whenever it intends to deny, withhold, decrease or discontinue CALM payments. That notice shall state with reasonable particularity the legal and factual basis for the proposed action.

(b) Proposed Notices of Action regarding withholding, reduction, or discontinuance from CALM shall be hand-delivered or mailed at least 10 calendar days prior to the effective date of the proposed action. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116. HEARINGS.

(a) An applicant for, or a recipient of, may challenge any denial, withholding, decrease or discontinuance by requesting an administrative hearing.

(b) A request for an administrative hearing must be made to the Department within seven calendar days of the date of hand delivery, or 10 calendar days of the date of mailing of the Proposed Notice of Action, or within three work days of the effective date of the action. Hearing requests that are not made in accordance with the time requirements shall be denied unless the applicant or recipient can establish good cause for failure to make a timely request. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.1. HEARING; NOTICE OF HEARING; WHEN HELD.

(a) After a hearing has been requested, a time and place for the hearing shall be established. Notice shall be given to the applicant or recipient indicating the day, date, time, and place of the hearing. In no event shall a hearing date be scheduled for a time less than five days after the Department's receipt of a request, unless the applicant makes a knowing and intelligent waiver of his or her right to a record review.

(b) Where an applicant for CALM is denied assistance, a hearing shall be calendared within seven days of the date of the hearing request.

(c) All hearings shall be held within 30 calendar days of the request therefor. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.2. CALM PAYMENTS PENDING.

A CALM recipient who makes a timely request for an administrative hearing shall receive CALM payments pending the appeal decision. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.3. IMPARTIAL HEARING OFFICER.

The Executive Director shall designate as an impartial hearing officer a person who is not involved in the administration of the CALM Program. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.4. HEARING; HEARING RIGHTS.

The applicant or recipient shall be advised in the Notice of Proposed Action of applicant's or recipient's rights to counsel or other representative, to review pertinent records and regulations at least five working days prior to the hearing, to present testimony and documentary evidence, to cross-examine all witnesses, to have the proceedings tape-recorded, and to have a translator provided for the hearing if the applicant or recipient is not proficient in English. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.5. INFORMALITY, EVIDENCE, APPEARANCE AND COUNSEL.

The hearing shall be conducted in an impartial and informal manner. All evidence shall be submitted under oath or affirmation. The hearing officer is not bound by the rules of evidence or procedures applicable to judicial proceedings. The applicant/recipient shall attend the hearing in person and may be represented by counsel or a representative. While the applicant/recipient may or may not be represented by counsel or a representative, the client must appear in order for the hearing to be held. However, where the applicant/recipient establishes good cause for nonattendance prior to the hearing under Sec-

tion 20.116.7, counsel or a representative may appear on behalf of the applicant/recipient. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.6. HEARING DECISION.

The hearing officer shall render a written decision within seven calendar days of the hearing indicating factual findings and grounds for the decision. Such decision shall be based solely upon evidence presented at the hearing and specifically state the facts upon which it was based, the authority relied upon and any other reasons for the decision. Such decision shall be mailed to the applicant or recipient. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.116.7. HEARING; FINALITY; EFFECT OF NONAPPEARANCE.

(a) The result of all hearings are considered final and there is no further right of administrative appeal.

(b) When the applicant/recipient does not appear for the scheduled hearing, it is presumed that the applicant/recipient ceases to contest the decision. The withholding, decrease, denial, discontinuance, and/or recoupment of overpayments of assistance will, therefore, be effected. The applicant or recipient may, for good cause shown, make a written request, or oral request as specified in the Executive Director's regulations, for a second hearing within 15 days of the scheduled date for the first hearing.

Such request must specify the good cause for nonattendance at the first hearing. This provision is satisfied by evidence of any of the following: (1) verified hospitalization; (2) verified illness; (3) incarceration; (4) verified disability or (5) other good cause satisfactorily shown to the Executive Director. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.117. FAIR ADMINISTRATION; DISCLOSURES; OVERPAYMENTS.

The Department shall administer this program fairly to the end that all eligible persons who apply for assistance shall receive CALM promptly, with due consideration for the needs of the applicant/recipient and the safeguard of pub-

lic funds. Overpayments of Medi-Cal shall be computed and collected in accordance with federal and State law and regulations regarding overpayments of Medi-Cal benefits.

(a) Any applicant for, or recipient or payee of, assistance under this Article shall be informed as to the provisions of eligibility and his or her responsibility for reporting facts material to a correct determination of eligibility, continuing eligibility and payment amount.

(b) Any applicant for, or recipient or payee of, assistance under this Article shall be responsible for reporting accurately and completely all facts required of him or her pursuant to Subdivision (a) and for reporting promptly any changes of those facts.

(c) Any person who makes full and complete disclosure of those facts as explained to him or her pursuant to Subdivision (a) is entitled to rely upon the payment amount as being accurate, and the warrant he or she receives as correctly reflecting the payment amount except as provided in Subdivisions (d), (e), (f).

(d) Overpayment due to administrative error or negligent failure to report facts required by this Article or department regulations may be recouped in accordance with the provisions of Section 20.102(q) governing recoupment in the absence of recipient fraud, until collected in full, following discovery of overpayment.

(e) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts required by this Article or department regulations shall be recouped in accordance with the provisions of Section 20.102(q) governing recoupment upon an administrative determination of recipient fraud, until collected in full, following discovery of overpayment.

(f) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts as required by this Article or Department regulations shall result in immediate discontinuance of assistance subject to the administrative hearing procedures in this Article. The case shall be referred to the Special Investiga-

tion Unit of the Department of Human Services. Any payments made under such circumstances shall be offset against any future payments as set forth in Section 20.102(q). (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.118. FRAUD IN OBTAINING PAYMENTS.

(a) The federal and State laws and regulations regarding "fraud" in the Medi-Cal program shall apply to receipt of Medi-Cal under this Article.

(b) With respect to fraud in obtaining CALM payments under this Article, whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by this Article or Department regulations, obtained payments under this Article, the matter shall be referred to the District Attorney's office for appropriate action.

Further, upon the first discontinuance of assistance within a 24 month period due to false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by the Article or Department regulations, an applicant or recipient shall be ineligible for assistance for a period of 30 days.

Upon the second such discontinuance within a 24 month period, the applicant or recipient shall be ineligible for assistance for a period of 60 days.

Upon the third, or additional, such discontinuance within a 24 month period, the applicant or recipient shall be ineligible for assistance for a period of 90 days. (Added by Ord. 149-98, App. 5/8/98) days.

SEC. 20.119. RECORDS; CONFIDENTIALITY.

All CALM records shall be confidential. The Department shall allow disclosure of such records only to the extent that Medi-Cal records may be released pursuant to applicable federal and State Medi-Cal laws and regulations. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.120. RECORDS; DESTRUCTION OF.

Destruction of records shall be governed by the applicable procedures under the Medi-Cal program. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.121. AUTHORITY TO TERMINATE THE PROGRAM.

The Board of Supervisors of the City and County of San Francisco has complete discretion and authority to terminate CALM at any time, for any reason. In the event that CALM is terminated, all CALM applicants and recipients shall be eligible to apply for General Assistance, PAES or SSIP, whichever is applicable, in accordance with the rules and regulations of those programs. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.122. SEVERABILITY.

If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.123. LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.124. OPERATIVE DATE.

This Article is to become effective no sooner than June 1, 1998. (Added by Ord. 149-98, App. 5/8/98)

SEC. 20.125. FUNDING.

A baseline appropriation for housing and related services provided as in-kind aid shall be established using the City and County of San Francisco FY 2002-2003 Annual Appropriation Ordinance and any supplemental appropriations for the amount of cash aid payments to applicants and recipients who declare themselves to be homeless. In subsequent fiscal years, this baseline amount shall be appropriated to the Department of Human Services to fund housing and related services for homeless adults without dependents. A baseline budget for the CALM Program shall be established using the City and County of San Francisco FY 2002-2003 final appropriation. In subsequent fiscal years, this baseline amount shall be appropriated to the Department of Human Services to fund housing and related services for homeless adults without dependents. This funding may be used to support, but shall not be limited to, some or all of the following: hotel master lease programs, permanent supportive housing, improvements of conditions in existing shelters, expansion of shelter capacity, mental health and substance abuse treatment, outreach, a fund for rental deposits, SSI advocacy programs, rep-payee services, case management, and meals for the homeless population through direct services and/or contracts. (Added by Proposition N, 11/5/2002)

SEC. 20.126. EVALUATION.

The provision of in-kind aid is to be evaluated by the Office of the Controller of the City and County of San Francisco every three years for program effectiveness and cost efficiency. (Added by Proposition N, 11/5/2002)

SEC. 20.127. OPERATIVE DATE OF AMENDMENTS.

The provisions of this amendment, Sections 20.106(b), (c), (i), (j); 20.106.2(a), (b), (c), (e); 20.125; and 20.126 shall become operative on or before July 1, 2003. (Added by Proposition N, 11/5/2002)

ARTICLE XI: SUPPLEMENTAL SECURITY INCOME PENDING (SSIP)

- Sec. 20.200. Title.
- Sec. 20.201. Purpose and Intent.
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- Sec. 20.203. Principles.
- Sec. 20.204. Administration.
- Sec. 20.205. Eligibility.
- Sec. 20.205.1. Residency Requirement.
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- Sec. 20.205.8. Allowable Real Property.
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- Sec. 20.209. Timing of SSIP Payments.
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- Sec. 20.212. Changes in SSIP Payments.
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- Sec. 20.217. SSIP Payments Pending.
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- Sec. 20.219. Fraud in Obtaining Payments.
- Sec. 20.220. Records; Confidentiality.
- Sec. 20.221. Records; Destruction of.
- Sec. 20.222. Authority to Terminate the Program.
- Sec. 20.223. Severability.

- Sec. 20.224. Limited to Promotion of General Welfare.
- Sec. 20.225. Operative Date.
- Sec. 20.226. Funding.
- Sec. 20.227. Evaluation.
- Sec. 20.228. Operative Date of Amendment.

SEC. 20.200. TITLE.

This Article shall be known as the "Supplemental Security Income Pending" or "SSIP." (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.201. PURPOSE AND INTENT.

The purpose of this program is to provide cash payments to those individuals with medical verification of a disabling condition that either has lasted, or is likely to last, 12 months in duration, as well as individuals with verified psychological incapacity to understand regulations and/or instructions. Such individuals will receive cash payments under this Article if they (a) apply for, (b) have applied for, or (c) have been determined eligible for, and in compliance with, SSA regulations, but have not yet received their first federal disability payment from the Social Security Administration (SSI benefits), and/or State supplemental disability payments (SSP).

It is the intent of the Board, that individuals who are eligible for participation in SSIP may choose, instead, to apply to the General Assistance Program, PAES or CALM in conformance with the provisions governing such programs under Articles VII, IX and X of this Chapter. However, individuals may not receive SSIP and General Assistance, PAES or CALM at the same time. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.202. DEFINITIONS.

For purposes of this Article:

- (a) "Applicant" means a person who is in the process of applying for assistance under this Article.
- (b) "Assistance" means services and/or cash payments.
- (c) "CALM" means the Cash Assistance Linked to Medi-Cal Program as set forth under Article X of this Chapter.

(d) "CalWORKs" means the California Work Opportunity and Responsibility to Kids as defined in Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code or any successor program.

(e) "Decrease" means any reduction in a recipient's current cash payment amount under this Article.

(f) "Denial" means a determination, based on an SSIP application, that the applicant is not eligible for SSIP.

(g) "Department" means the Department of Human Services.

(h) "Discontinuance" means the termination of a person's assistance.

(i) "Electronic benefit transfer" means a method of transferring benefits through a centralized computer system so that an applicant/recipient may obtain her/his benefits at facilities such as automated teller machines (ATM) and point-of-sale (POS) terminals using an access device such as a magnetic stripe plastic card. "Electronic benefit transfer" includes direct deposits.

(j) "Executive Director" means the Executive Director of the Department of Human Services.

(k) "Family budget unit" means an eligible applicant/recipient and her/his spouse or "domestic partner," as defined under Section 62.2 of the San Francisco Administrative Code, and/or any of the applicant/recipient's children who are under age 18, living with, and applying for SSIP with, such applicant/recipient, provided that such child(ren) was (were) never eligible for TANF/CalWORKs.

(l) "General Assistance" means the General Assistance Program as set forth under Article VII of this Chapter of the San Francisco Administrative Code (S.F. Adm. C. §§ 20.55, et seq.).

(m) The word "may" means the provision is permissive,

(n) "Medi-Cal" means the Medi-Cal Program as set forth in California Welfare and Institutions Code Sections 14000 et seq.

(o) "PAES" means the Personal Assisted Employment Services Program as set forth under Article IX of this Chapter.

(p) "Recipient" means a person who is receiving assistance under this Article.

(q) "Recoupment" means the collection of past overpayments under the SSIP Program by deducting from current payments not more than 10 percent of the current payment amount absent an administrative determination of recipient fraud and not more than 40 percent with an administrative determination of recipient fraud and an administrative evaluation of the recipient's current ability to make repayments.

(r) "Residing in an institution" shall mean that the applicant/recipient is staying in a facility that provides housing and three meals a day.

(s) The word "shall" means the provision is mandatory.

(t) "SSA" means the Social Security Administration.

(u) "SSI" means Supplemental Security Income.

(v) "State" means the State of California.

(w) "SSI/SSP" means the Supplemental Security Income/State Supplementary Program for the Aged, Blind, and Disabled as defined in the Welfare and Institutions Code Section 12000, et seq.

(x) "TANF" means Temporary Assistance to Needy Families as defined in Part A (commencing with section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code.

(y) The word "withholding" means the retention of payments. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.203. PRINCIPLES.

Assistance is to be administered in a manner which is consistent with the purposes of this program and which respects individual privacy and personal dignity:

(a) SSIP is to be administered promptly and humanely, without discrimination on account of race, sex, sexual orientation, religion or political affiliation.

(b) SSIP is to be so administered as to encourage self-respect, self-reliance and the desire to be a good citizen, useful to the community.

(c) SSIP is to be administered with courtesy, consideration and respect and without attempting to elicit any unnecessary information.

(d) Duties should be performed in such a manner as to secure for every applicant or recipient the assistance to which he or she is eligible.

(e) There is to be no question, inquiry or recommendation relating to the political or religious opinions or affiliations of any applicant or recipient.

(f) SSIP is to be administered in the most cost-effective manner possible. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.204. ADMINISTRATION.

(a) SSIP shall be administered by the Department of Human Services.

(b) The Executive Director shall establish the rules and regulations, consistent with this Article, for the proper administration of SSIP.

(c) In actual emergencies, the Executive Director of the Department of Human Services may make exceptions to this Article pending action by the Board of Supervisors. Such emergency exceptions shall be reported to the Board of Supervisors within five working days. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205. ELIGIBILITY.

(a) In order to be eligible to receive SSIP, an applicant must have medical verification of a disabling condition that either has lasted, or is likely to last, 12 months in duration and/or verified psychological incapacity to understand regulations and/or instructions.

(b) In addition, applicants must: (1) apply for; (2) have applied for; or (3) have been determined eligible for, and in compliance with, SSA regulations, but have not yet received their first federal disability payment from the Social Security Administration (SSI benefits), and/or State supplemental disability payments (SSP). The applicant must submit, to the Department, proof of their application for SSI benefits, and their

determination of eligibility. Upon determination that the applicant is in the process of applying for, or is eligible for, and will ultimately receive, SSI benefits, based upon federal eligibility criteria, the applicant will be eligible for SSIP until such applicant receives SSI benefits.

(c) All applicants/recipients, and all members of their family budget unit, are required to apply for, and pursue receipt of payment(s) from any and all federal, State, and/or private means of assistance for which they may be eligible as directed by the Department. This includes, but is not limited to: (1) Unemployment Insurance Benefits; (2) Worker's Compensation Insurance; (3) SSI; (4) retirement benefits, (5) any other insurance or disability payments. Failure to apply for, and pursue receipt of, any such assistance to which an applicant/recipient, and all members of their family budget unit, may be eligible shall be considered to be a failure to meet continuing eligibility requirements of this Article.

(d) Individuals residing in an institution are not eligible to receive assistance under this Article.

(e) Applicants may be required to attend group orientation session(s), and failure to do so shall be grounds for denial of assistance.

(f) Applicants who are eligible for CALM are not eligible to receive SSIP payments.

(g) Applicants serving a sanction for fraud under any County-funded indigent assistance program under this Chapter are ineligible to receive SSIP until that sanction period is completed.

(h) Receipt of SSI payments renders the applicant/recipient ineligible for further SSIP payments under this Article. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.1. RESIDENCY REQUIREMENT.

(a) An applicant/recipient of SSIP must reside in the City and County of San Francisco for 15 continuous days prior to the time of application for SSIP benefits. Residency in the City and County of San Francisco is established by physi-

cal presence and intent to reside in the City and County of San Francisco, which is satisfactorily substantiated by the applicant.

(b) Eligibility for SSIP will terminate immediately upon abandonment of residency in the City and County of San Francisco. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.2. APPLICATION FOR SSI.

(a) All applicants for SSIP must apply to the SSA for SSI but have not yet received SSI benefits.

(b) If an applicant has been discontinued from, or determined to be ineligible for, SSI by the SSA, based upon requirements other than failure to establish a disability within the meaning of SSA regulations, that applicant shall not be eligible for SSIP. However, such applicant may be eligible for assistance under the PAES, CALM or General Assistance Program.

(c) SSIP applicants and/or recipients shall:

(1) Apply for SSI/SSP if a disabling condition is likely to exist or has existed for a year or longer, authorize Department of Human Services reimbursement of SSIP payments from retroactive SSI/SSP benefits, and pursue and comply with the procedures under the SSI/SSP Program for successful qualification for benefits under that program; and

(2) Apply for and pursue a claim for any other appropriate benefit program available to the applicant or recipient and pursue and comply with the procedures for successful qualification under such benefit program. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.3. PRORATION OF SALARY OF FULL-TIME CERTIFIED EMPLOYEE OF SCHOOL DISTRICT, UNIVERSITIES, COMMUNITY COLLEGES OVER A TWELVE-MONTH PERIOD.

The salary of a full-time certified employee of a school district, private school, community college, or university shall be prorated over a 12-month period for the purpose of determining eligibility for payments under this Article. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.4. PRORATION OF INCOME OVER CONTRACT PERIOD.

The income of any person under a contract of employment on an annual basis who works and receives income from such contract in fewer than 12 months, but more than eight months, shall be prorated over the period of the contract for the purposes of this Article. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.5. PRORATION OF INCOME OF SELF-EMPLOYED AND FREELANCE WORKER OVER A TWELVE-MONTH PERIOD.

The income of any self-employed person or freelance worker shall be prorated over a 12-month period for the purpose of determining eligibility for payments under this Article. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.6. PROPRIETOR OF BUSINESS INELIGIBLE.

Proprietors of businesses who employ other workers are ineligible for payments under this Article. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.7. REBUTTABLE PRESUMPTION OF INELIGIBILITY—CURRENT INCOME OR EXPENSES.

Verified paid income or expenses which exceed the otherwise eligible applicant/recipient's total monthly income and/or assets during month of application or a current month of eligibility shall create a rebuttable presumption of ineligibility for SSIP payments. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.8. ALLOWABLE REAL PROPERTY.

(a) The applicant shall transfer or grant to the City and County of San Francisco any interest which the applicant has in any real property as security for the funds expended for SSIP.

(b) An applicant or recipient of SSIP may retain real property used as her/his home, provided that the applicant's or recipient's net monthly housing expense does not exceed the

otherwise eligible applicant/recipient's total monthly income and/or assets. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.9. ALLOWABLE PERSONAL PROPERTY.

No payments under this Article shall be made for any person who has not exhausted all assets and resources available to such person, except for those personal properties listed below:

(a) Cash assets, savings and/or checking accounts, the total of which does not exceed the current monthly maximum payment available to a single individual under this Article. Any combination of these assets that exceeds the monthly maximum payment available to a single individual under this Article shall be offset against the recipient's payment on a dollar-for-dollar basis. If the applicant is transitioning from the General Assistance Program, PAES or CALM and has been participating in the Earned Income and Asset Disregard Program within the three months prior to application for SSIP, such applicant may retain a total of up to \$2,000 in savings;

(b) Personal effects, exclusive of luxury jewelry;

(c) Household furnishings;

(d) Tools, trade equipment and fixtures used in the individual's regular trade or work;

(e) Insurance policies or funds placed in trust for the provision of interment or for funeral expenses to the extent of not more than \$600 per family;

(f) An interment plot for use by members of the applicant's or recipient's family;

(g) A vehicle with cash value of less than \$4,650. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.10. EXEMPT INCOME OR RESOURCES.

For the purpose of this Article:

(a) Personal property, income or resources shall not include income from relocation payments to individuals receiving payments under this Article being displaced by a redevelopment agency.

(b) Retirement benefits may be retained upon determination by the Executive Director or her/his designee that the applicant or recipient will be reemployed in the near future and that such employment is contingent upon the retirement fund not being withdrawn.

(c) Any verified loans made to a recipient or to an applicant in the month of application, or one month immediately prior to application, for the purpose of enabling that recipient or applicant to pay her/his rent, or for the purpose of payment of first and last month's rent and any lawful rental deposit, shall not be considered income or resources available to that recipient or applicant.

(d) Income tax refunds, including the Earned Income Tax Credit (EITC), issued to the applicant or recipient shall not be considered as income or resources available to the applicant or recipient.

(e) Payments made to the applicant or recipient under the Foster Care or FSET/GATES programs shall not be considered as income or resources available to the applicant or recipient.

(f) SSI/SSP benefits and resources of a member of the SSIP family shall not be considered as income or resources available to the applicant or recipient.

(g) The portion of any student grants or loans that is paid directly to the educational institution for tuition, and/or fees, and/or books. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.11. EXEMPTION FOR TERMINAL ILLNESS.

Terminally ill applicants with medical verification that such applicant has a remaining life expectancy of six months or less are exempt from:

(a) Providing documentation of legal status in the United States;

(b) The provisions of this Article regarding the cash value of a vehicle, provided that the applicant can demonstrate that such vehicle is necessary to transport the applicant to and from

medical treatment, and that he or she is physically and/or mentally unable to use public transportation;

(c) The provisions of this Article regarding the requirement to obtain and present any photo identification.

Such applicants shall meet all other eligibility requirements.

There shall be no time limit to the duration of eligibility for SSIP authorized under this Section. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.12. INELIGIBILITY OF INDIVIDUALS WHO ARE MEMBERS OF A CALWORKS ASSISTANCE UNIT.

(a) Any individual who is a member of an assistance unit receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 of the California Welfare and Institutions Code (CalWORKs), shall not be eligible for SSIP under this Article if the individual has been determined ineligible for CalWORKs pursuant to Welfare and Institutions Code Section 11251.3.

(b) Any individual who is not eligible for aid under CalWORKs pursuant to Welfare and Institutions Code Section 11454(b) shall not be eligible for SSIP until all of the children of the individual on whose behalf aid was received, and who live in the home with the individual, are 18 years of age or older.

(c) Any individual who is receiving aid under CalWORKs on behalf of an eligible child, but who is either ineligible for aid or whose needs are not otherwise taken into account in determining the amount of aid to the family pursuant to Section 11450 of the Welfare and Institutions Code due to the imposition of a sanction or penalty, shall not be eligible for aid or assistance under this part.

(d) The Executive Director, in her/his sole discretion may grant an exception to this Section. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.13. INELIGIBILITY OF FLEEING FELONS.

(a) An individual shall not be eligible for SSIP if he or she is:

Fleeing to avoid prosecution, or custody and confinement after conviction, under the laws

of the place from which the individual is fleeing, for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual is fleeing, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of that state.

(b) Subdivision (a) shall not apply with respect to conduct of an individual for any month beginning after the President of the United States grants a pardon with respect to the conduct. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.14. PHOTO IDENTIFICATION.

(a) Each applicant shall present proof of identity and a verifiable social security number. Only the following photo identification shall be accepted:

(1) California Department of Motor Vehicles Driver's License;

(2) California Department of Motor Vehicles Identification Card;

(3) Current United States Passport provided that such Passport contains a photo taken of the applicant/recipient when s/he was at least 18 years of age;

(4) Current Immigration and Naturalization identification, provided that such identification contains a photo which was taken of the applicant/recipient when s/he was at least 18 years of age and was taken within 10 years prior to the date of application of the applicant/recipient.

(b) In addition, the Department may require applicants and recipients to obtain and present Department-issued identification. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.15. FINGERPRINT INFORMATION.

All applicants for, and recipients of, SSIP shall be fingerprinted at the Department or at a Department-approved facility in accordance with procedures established by the Executive Director. These records shall be used exclusively to prevent multiple payments under this Article or

any other federal, State or County assistance program. The Executive Director is authorized to create, by regulation, exemptions from this requirement based on physical or mental disability. The refusal of an applicant or recipient to comply with the fingerprint procedures shall be grounds for denial of, or discontinuance from, SSIP.

Fingerprints gathered under this Section are subject to all applicable federal and State laws governing the confidentiality of information regarding applicants for, or recipients of, public benefits. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.16. REIMBURSEMENT AGREEMENT.

All applicants for SSIP shall sign an Interim Assistance Reimbursement Agreement, in the event that the applicant/recipient is subsequently awarded SSI. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.205.17. LABOR DISPUTE.

Unemployment due to a bona fide strike, lockout, or other labor dispute shall not affect eligibility provided that the applicant meets all other eligibility requirements. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.206. SSIP PAYMENTS.

(a) For each eligible individual or for each eligible family budget unit of two or more persons who qualify for assistance under the SSIP Program, the maximum monthly payment amount which recipients shall receive is listed below.

MAXIMUM SSIP PAYMENT AMOUNT

Single Individual	\$ 395
Number of Eligible Persons in Same Family	
2 Persons.....	\$ 649
3 Persons.....	804
4 Persons.....	955
5 Persons.....	1,089
6 Persons.....	1,223
7 Persons.....	1,343

8 Persons.....	1,464
9 Persons.....	1,586
10 Persons	1,723

In the case of more than 10 persons in a family budget unit, an additional \$25 each month shall be paid for each additional person in the family budget unit. For family budget units in which members receive cash payments from more than one federal, State or County assistance program, except for SSI/SSP, the total aid payment shall consist of the sum of each individual's proportionate share of the aid payment for a family budget unit of the same size within each program for which each member is eligible.

(b) The maximum monthly SSIP payment for which an applicant is eligible shall be the maximum monthly SSIP payment prorated as of the eligibility determination date, minus any nonexempt cash available to the applicant during that calendar month, minus the fair market value of any nonexempt personal property available to the applicant during that calendar month, and minus the value of any prorated in-kind housing, utilities and/or meals available or provided to the applicant. A rent payment, retroactive to the first of the month in which eligibility is determined, may be authorized to prevent eviction from existing housing.

(c) The maximum monthly SSIP payment for which a recipient is eligible shall be the maximum SSIP payment minus any nonexempt cash received from sources other than SSIP which is available to the recipient during the month for which the SSIP payment is paid, minus the fair market value of any nonexempt personal property which is, or will be, available to the recipient during the month for which the SSIP payment is paid, and minus the value of any in-kind housing, utilities and/or meals available or provided to the recipient.

(d) No SSIP payment shall be issued for less than \$5.00.

(e) SSIP may be provided in the form of vouchers, checks, two-party checks, warrants, electronic benefit transfers, in-kind benefits, and/or through third party contracts.

(f) SSIP payments may be made payable only to the recipient or, upon the recipient's written authorization, to the recipient and a designated co-payee, or to a representative payee.

(g) SSIP payments may be mailed directly to the recipient or to the designated representative payee. SSIP payments may be made by electronic benefit transfer. SSIP payments may be picked up at a location designated by the Department. SSIP payments shall not be mailed to a post office box, a mail receiving service, or to an address outside the City and County of San Francisco, except upon specific authorization of the Executive Director.

(h) The Maximum SSIP Payment Amounts listed in Section 20.206(a) of this Article shall be increased by any annual percentage cost of living increase to the Maximum Aid Payment, and according to the same schedule, if such an increase is implemented by the State of California in the TANF/CalWORKs Program.

(i) Applicants and recipients are required to provide a verifiable rent receipt, or verifiable documentation of shared housing or verifiable documentation of rent-free housing. Self-declared homeless applicants and recipients shall receive in-kind benefits for housing, utilities and meals. If in-kind benefits are not available, such applicants and recipients shall receive the income-in-kind value of housing, utilities, and/or meals; whichever is not available, if otherwise eligible for these amounts. Failure to comply with the rules of a housing program that results in ejection from that housing program will be considered failure to satisfy the requirements for continuing eligibility for aid and will result in discontinuance from SSIP, subject to the notice and hearing provisions of this Article.

(j) A special allowance of up to \$59.00 per month shall be made available to any recipient when the income-in-kind value of housing, and/or utilities, and/or meals provided to that recipient exceeds the maximum monthly payment for which that recipient is eligible. If such income-in-kind value does not exceed the maximum monthly payment for which that recipient is eligible, but allows for less than \$59.00 cash per month, that

recipient shall receive an amount that, when added to the maximum monthly payment for which that recipient is eligible, equals \$59.00 cash per month. This section shall not affect the collection of overpayments due to fraud, negligent failure to report facts or administrative error as set forth in this Article. (Added by Ord. 151-98, App. 5/8/98; amended by Proposition N, 11/5/2002; Ord. 93-07, File No. 070208, App. 4/27/2007)

SEC. 20.206.1. MUNICIPAL RAILWAY TOKENS.

Applicants/recipients may be provided Municipal Railway tokens, or other transportation assistance. Such assistance shall be in addition to any SSIP payment to which an applicant/recipient is eligible. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.206.2. EARNED INCOME DISREGARD.

(a) The Executive Director of the Department of Human Services may establish an Earned Income and Asset Disregard Program for applicants/recipients who are employed. The Earned Income and Asset Disregard Program shall provide for disregarding a certain amount of gross income which an applicant/recipient earns as wages and savings derived therefrom when determining an applicant/recipient's SSIP eligibility and payment amount.

(b) The total amount of gross income disregarded shall not exceed the sum of the following amounts: (1) all of the first \$200 of recipient gross wage earnings; (2) two-thirds of the next \$150 of recipient gross wage earnings; (3) one-half of the next \$150 of recipient gross wage earnings; (4) one-third of the next \$150 of recipient gross wage earnings; and (5) one-fifth of the next \$150 of recipient gross wage earnings. All recipient gross wage earnings above \$800 shall be offset on a dollar-for-dollar basis against the payment amount to which an applicant/recipient would otherwise be entitled.

(c) In addition, for applicant/recipients in this program up to \$2,000 of applicant/recipient savings derived from the applicant/recipient's

gross wage earnings shall be disregarded during the applicant/recipient's participation in this program and for up to three months thereafter.

(d) If, as a result of retrospective budgeting, an applicant/recipient's total currently available financial resources in a month including her/his adjusted SSIP payment, wages, and savings are less than the maximum SSIP payment amount, the applicant/recipient shall be eligible for a payment supplement in the form of a rental expense voucher for unpaid rent in that month and up to \$50 in cash so that the applicant/recipient's currently available financial resources may total up to the maximum SSIP payment amount. This payment supplement is available a maximum of three times per year for program applicants/recipients and is not available to applicants/recipients who quit a job without good cause.

(e) Applicant/recipient gross wage earnings are defined for purposes of this Section as any income received by the applicant/recipient as payment for an applicant/recipient's labor. All other applicant/recipient income and assets shall continue to be offset on a dollar-for-dollar basis when calculating the payment amount to which an applicant/recipient is otherwise eligible. For recipients participating in this program, SSIP eligibility shall be determined on a monthly basis and an applicant/recipient's payment amount shall be adjusted for gross wage earnings on the basis of retrospective budgeting in the month following the applicant/recipient's receipt of wage income. Verified expenses which exceed the total sum of an applicant/recipient's payment, wages, and savings in any given month create a rebuttable presumption of ineligibility for assistance. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.206.3. HOUSING.

(a) "Housing" shall include, but not be limited to, single occupancy residential hotels, master lease rooms, transitional housing, supportive housing programs, residential treatment facilities, shelter.

(b) There shall be no reduction in the SSIP payment for which an applicant or recipient is eligible because she/he shares housing with others who are not members of the applicant's/recipient's family budget unit. All applicants/recipients shall be required to present a verifiable rent receipt. If the applicant/recipient is not the owner or prime lessee of the premises, a verifiable rent receipt signed by the owner or prime lessee may provide evidence of the applicant's/recipient's place of residence and share of monthly housing costs.

(c) When an applicant/recipient obtains rent-free housing, such housing shall be valued according to the Income-in-Kind Values Chart set forth under Title 22 of the California Code of Regulations, Section 50511 (the "Income-in-Kind Chart"), rather than at fair market value. The value of the rent-free housing, which is presumed to include utilities, as determined under the Income-in-Kind Chart, shall be deducted from the maximum monthly payment amount. If the applicant or recipient receives rent-free housing, but pays for utilities, the applicant or recipient must present a verifiable bill for utilities at that address, and a verifiable receipt for payment of any portion of that utility bill.

(d) Verified payments made directly to a housing provider on behalf of an applicant or recipient for the entire amount of the rent and/or utilities, or rent-free housing, or housing received in exchange for work, shall be assigned an in-kind value as specified by the Income-in-Kind Chart and that value shall be deducted from the maximum monthly payment for which that applicant or recipient is eligible.

(e) Housing and/or meals provided to applicants and recipients who are unable to provide a verifiable rent receipt, or verifiable documentation of shared housing, or verifiable documentation of rent-free housing shall be valued as in-kind housing, utilities and/or meals as specified by the Income-In-Kind Chart, and that value shall be deducted from the maximum monthly stipend for which that applicant or recipient is eligible.

(f) Nothing in this Section shall be construed as requiring an otherwise eligible applicant or recipient to accept housing in a facility which is either the subject of a pending nuisance abatement proceeding before a duly authorized agency or department of the City and County or before a court of competent jurisdiction, or which theretofore has been found to be a public nuisance pursuant to any provision of any San Francisco Municipal Code by a duly authorized agency or department of the City and County or by a court of competent jurisdiction and which nuisance has not been abated. (Added by Ord. 151-98, App. 5/8/98; amended by Proposition N, 11/5/2002))

SEC. 20.206.4. ALTERNATIVE PAYMENT METHODS; DIRECT PAYMENTS TO ROOM AND BOARD FACILITIES PERMITTED.

In addition to the emergency assistance provisions of this Article, payment for room, food expense, or both, up to the maximum SSIP payment amount, may at the recipient's option, be paid directly to any board and/or care facility should the recipient or applicant choose to reside, take her/his meals or have full room and board privileges at such facilities. The Executive Director may initiate such a program or payment arrangement, on either a pilot or continuing basis, by putting into effect the appropriate regulations. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.206.5. SPECIAL ALLOWANCES; TRANSPORTATION OUT OF THE CITY.

(a) The Department of Human Services may provide transportation and maintenance en route to a place out of the City and County where the applicant/recipient will be cared for or her/his interests best served, provided the applicant/recipient, but for fully meeting the residency requirement, is otherwise eligible and voluntarily enters into a signed contractual agreement regarding such transportation with the City and County of San Francisco. Said agreement shall contain a repayment provision permitting recoup-

ment of the amount expended in providing such
transportation at a rate not to exceed 10 percent
of

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of each payment amount should the person provided transportation thereafter reapply and become eligible for SSIP.

(b) Transportation under this Section shall be provided by the least expensive means available. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.207. CONTINUING ELIGIBILITY.

(a) Persons who meet the requirements for eligibility for SSIP shall receive cash payments pursuant to this Article. Recipients are required to comply with all applicable provisions of this Article and the regulations promulgated thereunder. Recipients who fail to comply with applicable provisions of this Article and the regulations promulgated thereunder may have their SSIP payment withheld and/or decreased and/or discontinued as set forth in Department regulations.

(b) No withholding, decrease, or discontinuance of SSIP payments shall occur unless the person to be affected has been advised of the possibility of such action by means of a Notice of Proposed Action and has been afforded the opportunity for a hearing to dispute the proposed action.

(c) The Department may require applicants/recipients to attend substance abuse or other medical treatment programs as part of their continuing eligibility requirements. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.208. GOOD CAUSE.

For purposes of this Article, where an applicant/recipient is required to show "good cause" for not meeting one of his/her obligations or duties under this Article, good cause may be shown by evidence of any of the following: (1) verified hospitalization; (2) verified illness; (3) verified incarceration; (4) verified disability; or other good cause satisfactorily demonstrated to the Executive Director. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.209. TIMING OF SSIP PAYMENTS.

(a) **Emergency Assistance.** The Department may provide emergency assistance. The Executive Director of the Department of Human

Services is authorized to contract with social service agencies for the provision of emergency assistance.

(b) **Normal Payment Periods.** The Executive Director is authorized to establish normal payment periods of either twice monthly or once monthly. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.210. TIME LIMITS.

This program shall not be time limited. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.211. IMMEDIATE TERMINATION OF ELIGIBILITY.

Occurrence of the following events shall result in the immediate termination of eligibility for assistance under this Article: (1) receipt of SSI payments; (2) death of the recipient; (3) applicant/recipients request; (4) abandonment of County residency; or (5) institutionalization. Discontinuance of assistance due to the death of the recipient, or at the request of the applicant/recipients is subject to the notice provisions of Section 20.215(a); however, such discontinuances do not require 10 calendar day prior notice as specified in Section 20.215(b). All other discontinuances under this Section do require 10 calendar day prior notice as specified in Section 20.215(b). (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.212. CHANGES IN SSIP PAYMENTS.

(a) Changes in cash payments shall be made when an SSIP applicant/recipients becomes eligible for a payment in a different amount because of altered circumstances.

(b) A change in payment shall be made effective with the next regular pay date following knowledge by the worker of circumstances warranting a change in payment, in conformance with the notice and hearing requirements of this Article. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.213. LOST, FORGED OR STOLEN WARRANTS AND LOST OR STOLEN WARRANT PROCEEDS.

(a) Lost, forged, or stolen warrants may be replaced only in accordance with specific procedures adopted by the Department.

(b) If a warrant has been cashed by the recipient and the money lost or stolen, no replacement of the warrant or issuance of orders shall be permitted. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.214. INELIGIBILITY FOR GENERAL ASSISTANCE, PAES, CALM OR OTHER COUNTY-FUNDED ASSISTANCE.

Recipients of SSIP payments are not eligible for General Assistance, PAES, CALM or any other County-funded cash assistance programs. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.215. NOTICE OF PROPOSED ACTION.

(a) The Department shall issue a Notice of Proposed Action whenever it intends to deny, withhold, decrease or discontinue SSIP payments. That notice shall state with reasonable particularity the legal and factual basis for the proposed action.

(b) Proposed Notices of Action regarding withholding, reduction, or discontinuance from SSIP shall be hand-delivered or mailed at least 10 calendar days prior to the effective date of the proposed action. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216. HEARINGS.

(a) An applicant for, or a recipient of, SSIP may challenge any denial, withholding, decrease or discontinuance by requesting an administrative hearing.

(b) A request for an administrative hearing must be made to the Department within seven calendar days of the date of hand delivery of, or 10 calendar days of the date of mailing of the Proposed Notice of Action, or within three work days of the effective date of the action. Hearing requests that are not made in accordance with the time requirements shall be denied unless the applicant or recipient can establish good cause for failure to make a timely request. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216.1. HEARING; NOTICE OF HEARING; WHEN HELD.

(a) After a hearing has been requested, a time and place for the hearing shall be established. Notice shall be given to the applicant or recipient indicating the day, date, time, and place of the hearing. In no event shall a hearing date be scheduled for a time less than five days after the Department's receipt of a request, unless the applicant makes a knowing and intelligent waiver of his or her right to a record review.

(b) Where an applicant for SSIP is denied assistance, a hearing shall be calendared within seven days of the date of the hearing request.

(c) All hearings shall be held within 30 calendar days of the request therefor. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216.2. IMPARTIAL HEARING OFFICER.

The Executive Director shall designate as an impartial hearing officer a person who is not involved in the administration of the SSIP Program. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216.3. HEARING; HEARING RIGHTS.

The applicant or recipient shall be advised in the Notice of Proposed Action of applicant's or recipient's rights to counsel or other representative, to review pertinent records and regulations at least five working days prior to the hearing, to present testimony and documentary evidence, to cross-examine all witnesses, to have the proceedings tape-recorded, and to have a translator provided for the hearing if the applicant or recipient is not proficient in English. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216.4. INFORMALITY, EVIDENCE, APPEARANCE AND COUNSEL.

The hearing shall be conducted in an impartial and informal manner. All evidence shall be submitted under oath or affirmation. The hearing officer is not bound by the rules of evidence or procedures applicable to judicial proceedings.

The applicant/recipient shall attend the hearing in person and may be represented by counsel or a representative. While the applicant/recipient may or may not be represented by counsel, or a representative, the client must appear in order for the hearing to be held. However, where the applicant/recipient establishes good cause for nonattendance prior to the hearing under Section 20.216.6, counsel or a representative may appear on behalf of the applicant/recipient. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216.5. HEARING DECISION.

The hearing officer shall render a written decision within seven calendar days of the hearing indicating factual findings and grounds for the decision. Such decision shall be based solely upon evidence presented at the hearing and specifically state the facts upon which it was based, the authority relied upon and any other reasons for the decision. Such decision shall be mailed to the applicant or recipient. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.216.6. HEARING; FINALITY; EFFECT OF NONAPPEARANCE.

(a) The result of all hearings are considered final and there is no further right of administrative appeal.

(b) When the applicant/recipient does not appear for the scheduled hearing, it is presumed that the applicant/recipient ceases to contest the decision. The withholding, decrease, denial, discontinuance, and/or recoupment of overpayments of SSIP will, therefore, be affected. The applicant or recipient may, for good cause shown, make a written request, or oral request as specified in the Executive Director's regulations, for a second hearing within 15 days of the scheduled date for the first hearing.

Such request must specify the good cause for nonattendance at the first hearing. This provision is satisfied by evidence of any of the following: (1) verified hospitalization; (2) verified illness; (3) incarceration; (4) verified disability or (5) other good cause satisfactorily shown to the Executive Director. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.217. SSIP PAYMENTS PENDING.

A SSIP recipient who makes a timely request for an administrative hearing shall continue to receive SSIP payments pending the hearing decision. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.218. FAIR ADMINISTRATION; DISCLOSURES; OVERPAYMENTS.

The Department shall administer this program fairly to the end that all eligible persons who apply for assistance shall receive SSIP promptly, with due consideration for the needs of the applicant/recipient and the safeguard of public funds.

(a) Any applicant for, or recipient or payee of, payments under this Article shall be informed as to the provisions of eligibility and her/his responsibility for reporting facts material to a correct determination of eligibility, continuing eligibility and payment amount.

(b) Any applicant for, or recipient or payee of, payments under this Article shall be responsible for reporting accurately and completely all facts required of her/him pursuant to Subdivision (a) and for reporting promptly any changes of those facts.

(c) Any person who makes full and complete disclosure of those facts as explained to her/him pursuant to Subdivision (a) is entitled to rely upon the payment amount as being accurate, and the warrant he or she receives as correctly reflecting the payment amount except as provided in Subdivisions (d), (e), (f).

(d) Overpayment due to administrative error or negligent failure to report facts required by this Article or Department regulations may be recouped in accordance with the provisions of Section 20.202(q) governing recoupment in the absence of recipient fraud, until collected in full, following discovery of overpayment.

(e) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts required by this Article or Department regulations shall be recouped in accordance with the provisions of Section 20.202(q)

governing recoupment upon an administrative determination of recipient fraud, until collected in full, following discovery of overpayment.

(f) Overpayment due to false statement or representation or by impersonation or other fraudulent device or by intentional failure to report facts as required by this Article or Department regulations shall result in immediate discontinuance of payments subject to administrative hearing procedures in this Article. The case shall be referred to the Special Investigation Unit of the Department of Human Services. Any payments made under such circumstances shall be offset against any future payments as set forth in Section 20.202(q). (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.219. FRAUD IN OBTAINING PAYMENTS.

Whenever any person has, by means of false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by this Article or Department regulations, obtained payments under this Article, the matter shall be referred to the District Attorney's office for appropriate action.

Further, upon the first discontinuance of payments within a 24 month period due to false statement or representation or by impersonation or other fraudulent device, or by intentional failure to report facts required by the Article or Department regulations, an applicant or recipient shall be ineligible for payments for a period of 30 days.

Upon the second such discontinuance within a 24 month period, the applicant or recipient shall be ineligible for payments for a period of 60 days.

Upon the third, or additional, such discontinuance within a 24 month period, the applicant or recipient shall be ineligible for payments for a period of 90 days. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.220. RECORDS; CONFIDENTIALITY.

All SSIP records shall be confidential and shall not be opened to examination or inspection

except by the Grand Jury of the County or by a board or an officer of the State or the County charged with the administration, supervision or direction of the SSIP Program, or upon written waiver by the applicant or recipient. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.221. RECORDS; DESTRUCTION OF.

All inactive case records that are over five years old may be destroyed. All records involving closed SSIP cases may be destroyed after five years. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.222. AUTHORITY TO TERMINATE THE PROGRAM.

The Board of Supervisors of the City and County of San Francisco has complete discretion and authority to terminate SSIP at any time, for any reason. In the event that SSIP is terminated, all SSIP applicants and recipients shall be eligible to apply for General Assistance, PAES OR CALM, whichever is applicable, in accordance with the rules and regulations of those programs. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.223. SEVERABILITY.

If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of this Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Article are severable. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.224. LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this ordinance, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.225. OPERATIVE DATE.

This Article is to become effective no sooner than June 1, 1998. (Added by Ord. 151-98, App. 5/8/98)

SEC. 20.226. FUNDING.

A baseline appropriation for housing and related services provided as in-kind aid shall be established using the City and County of San Francisco FY 2002-2003 Annual Appropriation Ordinance and any supplemental appropriations for the amount of cash aid payments to applicants and recipients who declare themselves to be homeless. In subsequent fiscal years, this baseline amount shall be appropriated to the Department of Human Services to fund housing and related services for homeless adults without dependents. This funding may be used to support, but shall not be limited to, some or all of the following: hotel master lease programs, permanent supportive housing, improvements of conditions in existing shelters, expansion of shelter capacity, mental health and substance abuse treatment, outreach, a fund for rental deposits, SSI advocacy programs, rep-payee services, case management, and meals for the homeless population through direct services and/or contracts. (Added by Proposition N, 11/5/2002)

SEC. 20.227. EVALUATION.

The provision of in-kind aid is to be evaluated by the Office of the Controller of the City and County of San Francisco every three years for program effectiveness and cost efficiency. (Added by Proposition N, 11/5/2002)

SEC. 20.228. OPERATIVE DATE OF AMENDMENT.

The provisions of this amendment, Sections 20.206(b),(c),(i),(j), 20.206.3(a),(b),(c),(e); 20.226; and 20.227 shall become operative on or before July 1, 2003. (Added by Proposition N, 11/5/2002)

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ARTICLE XII: SHELTER MONITORING COMMITTEE

- Sec. 20.300. Findings.
- Sec. 20.301. Definitions.
- Sec. 20.302. Establishment.
- Sec. 20.303. Purpose.
- Sec. 20.304. Powers and Duties.
- Sec. 20.305. Membership and Organization.
- Sec. 20.306. Terms of Office.
- Sec. 20.307. Meetings.
- Sec. 20.308. Attendance Requirement.
- Sec. 20.309. Limitation of Liability.
- Sec. 20.310. Severability.
- Sec. 20.311. Initial Committee Report.
- Sec. 20.312. Coordination with Local Homeless Coordinating Board.

SEC. 20.300. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) The City and County of San Francisco funds shelters and resource centers that serve homeless people; and

(b) There is a significant public interest in determining that the homeless shelters that the City funds are safe and sanitary, that the shelters' policies and procedures are fair and meet the needs of the clients accessing shelter services; that operators receiving City funds are complying with their contractual obligations to the City, and that shelter clients benefit from the expenditure of public funds; and

(c) The Mayor, the Board of Supervisors, the Local Homeless Coordinating Board, any future advisory body created by the City and County of San Francisco, and the public, among others, need to be able to access accurate and comprehensive information regarding shelters. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.301. DEFINITIONS.

For purposes of this Article only, "shelter" shall include shelters and resource centers that have a primary goal of serving homeless people

and that are funded in whole or in part by the City. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.302. ESTABLISHMENT.

A Shelter Monitoring Committee ("Committee") is hereby established. The Committee shall document its findings and shall submit reports consistent with this Article to the Mayor, the Board of Supervisors, the Local Homeless Coordinating Board, the public, and any other entity, as appropriate. Subject to the fiscal and budgetary provisions of the Charter, the Department of Public Health shall assign two full-time employees to staff the Shelter Monitoring Committee. The Committee shall, among other things, receive and document complaints made to the Committee regarding shelters and shall refer complaints to appropriate committee members for follow-up. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004; Ord. 150-07, File No. 070084, App. 7/3/2007; Ord. 51-08, File No. 080229, App. 3/28/2008)

SEC. 20.303. PURPOSE.

The purpose of the Committee is to provide the Mayor, the Board of Supervisors, the Local Homeless Coordinating Board, the public, and any other appropriate agency with accurate, comprehensive information about the conditions in and operations of shelters covered by this Article, as well as City policies in place that affect operations of shelters or their impact on shelter clients. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004; Ord. 150-07, File No. 070084, App. 7/3/2007)

SEC. 20.304. POWERS AND DUTIES.

The Committee shall have all of the powers and duties necessary to carry out the functions of the Committee as follows:

(a) **Site Visits.** Individual Committee members shall form teams and make unannounced site visits to all shelters a minimum of 4 times per year, per site. The scope of the site visits shall be limited to gathering information rel-

evant to: 1) health and safety conditions in shelters, 2) the adequacy of policies and procedures governing each facility, and 3) the treatment and personal experience of shelter residents in the shelters. Committee members shall conduct site visits in the least invasive manner possible and shall respect the privacy rights of shelter clients. In addition, teams shall make two announced site visits per year for the purpose of giving shelter residents the opportunity to discuss shelter conditions with the members of the Committee. All site visits shall occur during shelter operating hours only. After consulting shelter staff, the Committee shall post Committee contact information and information regarding announced visits at each shelter. Each team shall prepare a report for the full Committee on their findings and recommendations as described below under subsection (b), "Reports."

(b) **Reports.** The Committee shall prepare and submit quarterly reports that shall include but not be limited to information on the following: safety in the shelter, cleanliness in the shelter, disability access to and within the shelter, family life in the shelter, a review of policies and procedures in place at the shelter, and any information received regarding the treatment and personal experiences of shelter residents. In order to enable the Committee to prepare reports required under this subsection, City departments that contract for services at a shelter that is under review must respond within 15 days to any reasonable request for information submitted by the Committee relative to the shelter or to City policies that affect operations of shelters or their impact on shelter clients. The reports shall also include recommended action steps for the shelter and for the City department that contracts for services at the shelter. City departments and the reports referenced in this subsection shall not identify shelter residents or disclose any confidential information concerning shelter residents consistent with state and federal law. The Committee may issue emergency reports at any time it deems necessary. The reports shall be provided to: 1) the Mayor, 2) the Board of Supervisors, 3) the Local Homeless Coordinating Board, 4) the appropriate city department responsible

to take action, 5) the city department that contracts for services at the shelter, 6) the shelter under review, and 7) the public. These reports shall be public documents. Any city department identified in the report as responsible to take action recommended in the report shall, within 30 days of issuance of the report, provide to the Board of Supervisors a departmental report setting forth how the department intends to respond to the Committee's recommendations.

(c) **Training.** All members of the Committee shall receive training in confidentiality laws regarding the provision of services to homeless people, as applicable, and will agree in writing to comply with any and all confidentiality requirements. In addition, members of the Committee may not disclose the following information before an unannounced shelter visit occurs; the date, time, and location of an unannounced shelter visit and the identity of the members of the team conducting the visit. After providing notice and an opportunity to be heard, the Committee may remove a Committee member for making disclosures prohibited by this subsection. If the Committee removes a Committee member pursuant to this subsection, it shall inform the appointing authority of this fact and request that the appointing authority appoint a replacement as soon as possible. All members of the Committee shall receive sensitivity training related to cultural differences, gender issues and the Americans With Disabilities Act. Committee members shall receive other training deemed necessary by the Committee to carry out its functions.

(d) **Retaliation Prohibition.** Shelter staff and shelter clients shall not be retaliated against for participating in any activity involving the Committee. This section is not intended to create a private right of action against the City and County of San Francisco. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004; Ord. 150-07, File No. 070084, App. 7/3/2007)

SEC. 20.305. MEMBERSHIP AND ORGANIZATION.

(a) The membership of the Committee shall reflect the diversity of the homeless people that access shelter in the City. The Committee shall

consist of 13 members, one of whom shall be a homeless person (or homeless within the 3 years prior to appointment) with a disability and one of whom shall be a homeless person (or homeless within the 3 years prior to appointment) living with their homeless child who is under the age of 18. The 13 members of the Committee shall be appointed as follows: three members shall be appointed by the Mayor, including one member from the Department of Human Services, one member from the Department of Public Health, and one member who is homeless or formerly homeless and who has experience providing direct services to the homeless through a community setting. Six members shall be appointed by the Board of Supervisors including: two homeless or formerly homeless individuals; one member who has experience providing direct services to the homeless through a community setting; one member selected from a list of candidates that are nominated by community agencies that provide behavioral health, housing placement, or other services to the homeless; and two members selected from a list of candidates that are nominated by non-profit agencies that provide advocacy or organizing services to homeless people, one of which is homeless or formerly homeless. Four members shall be appointed by the Local Homeless Coordinating Board, including: one member selected from a list of candidates that are nominated by non-profit agencies that provide advocacy or organizing services to homeless people; two members who have experience providing direct services to the homeless through a community setting, one of which is formerly homeless; and one member shall be homeless or formerly homeless and selected from a list of candidates that are nominated by community agencies that provide behavioral health, housing placement, or other services to homeless individuals. In making their appointments to the Committee, the appointing authorities are encouraged to select people who are bilingual.

(b) Officers. At the first calendared meeting and thereafter at the beginning of each even-numbered calendar year, the members of the Shelter Monitoring Committee shall elect members to serve as chair, vice-chair, and secretary of

the Committee. The chair, or vice-chair, in the absence of the chair, shall be responsible for developing agendas and conducting meetings. The secretary shall be responsible for approving meeting minutes and committee correspondence prior to distribution.

(c) Committee members who work at a resource center or shelter shall not conduct site visits at that site or any other site that is part of that agency. If they are former employees of a site, they must wait at least six months before conducting a site visit. Committee members who currently reside at a shelter shall not conduct site visits at that site or any other site that is part of that agency. Committee members who used to reside at a shelter must wait at least six months before conducting a site visit at that site or any other site that is part of that agency.

Committee members from the Human Services Agency and the Department of Public Health shall not conduct official site visits on behalf of the Shelter Monitoring Committee at a site where their respective agency holds a contract with said site or agency. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004; Ord. 150-07, File No. 070084, App. 7/3/2007)

SEC. 20.306. TERMS OF OFFICE.

The term of office of each Committee member shall be two years. In the event that a vacancy occurs during the term of office of any Committee member, a successor shall be appointed to complete the expired term of office. The interim appointment shall be made in the same or similar manner that governed the initial appointment of the departing member. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.307. MEETINGS.

The Committee shall meet a minimum of once per quarter at such times and places as the Committee shall designate. The location of the meetings shall be accessible to the public and the meetings shall comply with applicable public meeting requirements under state and local law. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.308. ATTENDANCE REQUIREMENT.

The Committee shall monitor the attendance of Committee members. In the event that any Committee member misses three regularly scheduled Committee meetings in a six-month period without prior notice to the Committee, the Committee shall certify in writing to the Committee that the member missed three meetings in a six-month period of time. On the date of such certification, the member shall be deemed to have resigned from the Committee. The Committee shall notify the appointing authority accordingly and request the appointment of a new member. The vacant seat shall be filled within two months or an alternate appointing body shall fill the vacant seat. The alternate appointing body shall rotate per appointment as follows: the Local Homeless Coordinating Board, the Board of Supervisors, and the Mayor. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004; Ord. 150-07, File No. 070084, App. 7/3/2007)

SEC. 20.309. LIMITATION OF LIABILITY.

By adopting this Article, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such a breach proximately caused injury. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.310. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.311. INITIAL COMMITTEE REPORT.

Once initially constituted, the Committee shall, within sixty days, report to the Rules Committee

of the Board of Supervisors (or its successor committee) regarding its planned course of action. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004)

SEC. 20.312. COORDINATION WITH LOCAL HOMELESS COORDINATING BOARD.

The Chair of the Shelter Monitoring Committee, or his or her designee, shall attend all meetings of the Full Local Homeless Coordinating Board and Local Homeless Coordinating Board Steering Committee in order to report on this Committee's site visits and recommended actions based on those site visits. (Added by Ord. 283-04, File No. 041449, App. 12/1/2004; Ord. 150-07, File No. 070084, App. 7/3/2007)

ARTICLE XIII: STANDARD OF CARE FOR CITY SHELTERS

- Sec. 20.400. Findings.
- Sec. 20.401. Definitions.
- Sec. 20.402. Purpose.
- Sec. 20.403. City Requirements.
- Sec. 20.404. Contract Requirements.
- Sec. 20.405. Complaint Process and Investigation.
- Sec. 20.406. Corrective Action Plan, Imposition of Liquidated Damages.
- Sec. 20.407. Severability.
- Sec. 20.408. Limited to Promotion of General Welfare.

SEC. 20.400. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) In 2004, the Board of Supervisors created the Shelter Monitoring Committee that is required to provide the Mayor, the Board of Supervisors, and others with accurate and comprehensive information about the conditions in and operations of shelters funded by the City.

(b) After conducting numerous site visits of City-funded shelters and after investigating many complaints it received from shelter clients, the Shelter Monitoring Committee found that the City's shelter system lacks comprehensive standards of care to be provided to clients utilizing shelter services.

(c) In order to ensure that all City-funded shelter operators meet minimum standards of care in the shelter system, and that all shelter clients are treated with dignity and respect and are provided with a clean, healthy, and safe shelter stay, the Board of Supervisors hereby adopts the following contractual requirements that apply to all shelter operators in San Francisco. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.401. DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply to the terms used herein.

(a) "City" means the City and County of San Francisco.

(b) "Contract monitor" means the City employee who monitors the shelter operator's compliance with the contract for shelter services.

(c) "Director" means the Director of the City department that oversees the contract for City-funded shelter services.

(d) "Shelter" means a facility, including a resource center, operating under a contract with the City, to provide temporary emergency shelter services for homeless single adults or families.

(e) "Shelter operator" means the operator of a shelter. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.402. PURPOSE.

The purpose of this Chapter is to establish standards of care ("shelter operating standards") that the City must include in contracts with shelters and to ensure that the City takes corrective enforcement measures against shelter operators who fail to comply with shelter operating standards. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.403. CITY REQUIREMENTS.

The City shall provide the following shelter services, consistent with this Article:

(a) Ensure 24-hour client access to a shelter and provide on-site shelter reservations for current shelter clients, and

(b) Provide at least one 24-hour emergency drop-in center. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.404. CONTRACT REQUIREMENTS.

(a) All contracts between the City and shelter operators shall include provisions that require shelter operators to:

(1) treat all shelter clients equally, with respect and dignity;

(2) provide shelter services in an environment that is safe and free of physical violence by ensuring that safety protocols are in place that include training to shelter staff regarding de-escalation techniques;

(3) provide soap, paper towels or hand towels, hand sanitizers, and at least one bath-size (24" x 48") towel to shelter clients and staff in each bathroom: if hand dryers are currently installed they shall be maintained in proper working condition; in addition, shelters shall provide toilet paper in each bathroom stall and hire janitorial staff to clean the shelters on a daily basis;

(4) provide feminine hygiene and incontinence supplies upon request;

(5) comply with current City policy set forth in the San Francisco Environment Code, including the requirements set forth in Chapter 3 (the Integrated Pest Management Code) and Chapter 2 (the Environmentally Preferable Purchasing Ordinance) to ensure that shelter operators use products that are least harmful to shelter clients, staff, and the environment;

(6) ensure that first aid kits, CPR masks, and disposable gloves are available to staff at all times and make Automatic External Defibrillators (AED) available to staff in compliance with all regulatory requirements of State and Local law relating to the use and maintenance of AEDs;

(7) supply shelter clients with fresh cold or room temperature drinking water at all times during normal operating hours;

(8) provide shelter services in compliance with the Americans with Disabilities Act (ADA), including but not limited to:

(i) appropriate and secure storage of medication;

(ii) the provision of accessible sleeping, bathing and toileting facilities in previously designated ADA compliant shelters. Sleeping areas designated as accessible shall comply with Federal and State law requiring a minimum of 36 inches between sleeping units and a sleeping surface height between 17—19 inches above the finished floor. In consultation with the contract-

ing City department, and based on a history of previous usage, shelter operators shall designate an adequate number of accessible sleeping units to meet the needs of shelter clients requiring such facilities due to a mobility disability; and

(iii) reasonable modifications to shelter policies, practices, and procedures.

(9) engage a nutritionist, who shall develop all meal plans, including meal plans for children and pregnant women and post menus on a daily basis;

(10) make dietary modifications to accommodate requests from clients based on religious beliefs and practices, health, or disability reasons;

(11) provide a smoke-free environment for all shelter clients and prohibit smoking within 20 feet of a children's play area;

(12) provide shelter clients with one clean blanket, two clean sheets, and one pillow enclosed in a plastic or vinyl sleeve with a clean pillowcase; sheets shall be cleaned at least once per week and upon client turnover;

(13) make the shelter facility available to shelter clients for sleeping at least 8 hours per night;

(14) provide daytime access to beds in all 24-hour shelters;

(15) provide shelter clients with pest-free, secure property storage inside each shelter. Shelter staff shall provide closable plastic bags to clients for storage purposes. If storage inside a shelter is unavailable, the shelter operator may provide free, pest-free storage off-site as long as the off-site storage is available to the shelter client up until the time of evening bed check;

(16) provide shelter clients with access to electricity for charging their cell phones and other durable medical equipment for clients with disabilities;

(17) note in writing and post in a common area in the shelter when a maintenance problem will be repaired and note the status of the repair;

(18) provide access to free local calls during non-sleeping hours, including TTY access and amplified phones for clients who are deaf or hearing-impaired;

(19) provide a minimum of 22 inches between the sides of sleeping units, excluding designated ADA-accessible sleeping units and sleeping units separated by a wall;

(20) provide all printed materials produced by the City and shelters in English and Spanish and other languages upon request and ensure that all written communications are provided to clients with sensory disabilities in alternate formats such as large print, Braille, etc. upon request;

(21) communicate with each client in the client's primary language or provide professional translation services, including but not limited to American Sign Language interpretation; however, children or other clients may be asked to translate in emergency situations;

(22) provide at least one front line staff at each site that is bilingual in English and Spanish;

(23) ensure that each shelter has an emergency disaster plan that requires drills on a monthly basis and that, in consultation with the Mayor's Office on Disability, includes specific evacuation devices and procedures for people with disabilities;

(24) locate an alternative sleeping unit for a client who has been immediately denied shelter services after 5:00 p.m., unless the denial of service was for acts or threats of violence;

(25) require all shelter staff to wear a badge that identifies the staff person by name and position;

(26) ensure that all clients receive appropriate and ADA-compliant transportation services, to attend medical appointments, permanent housing appointments, substance abuse treatment, job-search appointments and job interviews, mental health services, and shelter services;

(27) provide public notification at least 24 hours in advance of on-site, community meetings;

(28) provide clients with access to free laundry services with hot water and a dryer that reaches a temperature between 120—130 degrees Fahrenheit, on or off site;

(29) to the extent not inconsistent with Proposition N. passed by the voters on November 5, 2002, ensure that all single adult shelter reservations be for a minimum of 7 nights;

(30) agree to comply with the California Department of Industrial Relations, Division of Occupational Safety and Health (Cal-OSHA) General Industry Safety Orders regarding Bloodborne Pathogens (8 CCR 5193) and its Injury and Illness Prevention Program (8 CCR 3203), including but not limited to applicable requirements regarding personal protective equipment, universal precautions, and the development of an exposure control plan, as defined therein, and

(31) in consultation with the San Francisco Department of Public Health, provide annual all-staff mandatory trainings, appropriate for each shelter position, that address Cal-OSHA regulatory requirements listed in subsection (30), above, as well as the following topics:

(i) hand washing requirements and other communicable disease prevention;

(ii) proper food handling and storage;

(iii) emergency procedures in case of disaster, fire, or other urgent health or safety risk, including but not limited to CPR requirements;

(iv) safe and appropriate intervention with violent or aggressive shelter clients, including training on the harm reduction model in dealing with substance abuse;

(v) safe and appropriate interaction with shelter clients who suffer from mental illness or substance abuse;

(vi) on-the-job burn-out prevention;

(vii) requirements under the ADA;

(viii) policies and procedures explained in shelter training manuals; and

(ix) cultural humility, including sensitivity training regarding homelessness, the lesbian, bisexual, gay, and transgender communities, people with visible and invisible disabilities, youth, women, and trauma victims.

(b) In addition, every contract covered by this Article shall contain a provision in which the shelter operator agrees:

(1) to be liable to the City for liquidated damages as provided in this Article;

(2) to be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Article as set forth in this section;

(3) that the contractor's commitment to comply with contractual obligations that this Article imposes is a material element of the City's consideration for this contract; that the failure of the contractor to comply with such obligations will cause harm to the City and the public that is significant and substantial but extremely difficult to quantify; and that the assessment of liquidated damages of up to \$1,250.00 made pursuant to the liquidated damages schedule referred to in Section 20.406(b)(1) below for every unmitigated failure to comply with such obligations is a reasonable amount of damages to redress the harm to the City caused by such obligations;

(4) that the failure of contractors to comply with contract provisions that this Article requires may result in debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(5) that in the event the City brings a civil action to recover liquidated damages for breach of a contract provision required by this Article and prevails, the contractor will be liable for the City's costs and reasonable attorneys fees.

(c) The Board of Supervisors recognizes that these amendments will have a material effect on the existing shelters whose contracts with the City require the City to pay the shelter operators a certain negotiated amount for services offered at each shelter. The City and the shelter operators contemplated that the shelters would operate at or near capacity through most of the year. This legislation may reduce the number of beds available in some shelters. In addition this legislation will impose obligations on shelter opera-

tors that exceed their obligations under their existing agreements with the City and therefore increase their operating costs. City officials and shelter operators based their budgetary assumptions and contracting decisions on factors that existed before this legislation existed. Therefore, the Board of Supervisors authorizes each City department overseeing contracts affected by this legislation to negotiate amendments to existing contracts to reflect these changes so long as current contract amounts are not reduced. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.405. COMPLAINT PROCESS AND INVESTIGATION.

(a) Each shelter shall provide client complaint forms in common areas of the shelter and shall make a complaint form available to a shelter client upon request. In addition, shelter staff must accept and investigate written client complaints from the Shelter Monitoring Committee. Shelter staff shall review and respond to written client complaints within 2 business days. Shelter staff shall make best efforts to take necessary corrective action in response to all client complaints internally within 5 days. If the client is not satisfied with the response, the shelter operator shall refer the complaint to the contract monitor and to the Shelter Monitoring Committee. The Shelter Monitoring Committee shall investigate these complaints within 10 days of receipt of the complaint and shall provide the shelter operator with an opportunity to respond to the allegations. The Shelter Monitoring Committee shall also forward the results of its investigation to the Director of the San Francisco Department of Public Health (DPH), or his or her designee, who shall comply with Section 20.406(a) below.

(b) Each Director, in consultation with the Director of DPH, or his or her designee, shall promulgate appropriate guidelines or rules for the enforcement of the shelter operator's contractual obligations imposed pursuant to this Article. Such guidelines or rules may establish procedures for ensuring fair, efficient, and cost-effective implementation of these obligations, including mechanisms to monitor contractor com-

pliance and to determine whether a contractor has failed to comply with its contract obligations set forth in Section 20.404, above. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.406. CORRECTIVE ACTION PLAN, IMPOSITION OF LIQUIDATED DAMAGES.

(a) Where the Director of DPH, or his or her designee, after providing the contractor with the opportunity to respond to the alleged violation, determines that a contractor failed to comply with the provisions of this Article, the Director of DPH, or his or her designee, shall provide written notice to the contractor and the contract monitor as follows:

(1) the factual basis for the determination;

(2) the corrective action plan that the contractor must take to remedy the violation;

(3) the amount of liquidated damages that the Director of DPH, or his or her designee, has assessed for the contractor's violation of this Article;

(4) notice that the contractor has 15 days to either follow the required corrective action plan, including payment of liquidated damages, or to file an appeal consistent with subsection (5), below;

(5) that the contractor has the right to appeal the Director of DPH, or his or her designee's final determination, including the assessment of liquidated damages and the amount assessed, to an arbitration panel appointed by the Director of DPH, but that the contractor must file any such appeal in writing with the arbitration panel within 15 days of the date of the issuance of the City's determination and that a contractor's failure to exhaust this administrative remedy will bar subsequent judicial action challenging the City's determination;

(6) that if the contractor fails to follow the corrective action plan or file an appeal in writing with the arbitration panel within 15 days as set forth above, the Director of DPH, or his or her designee's determination shall be the City's final and binding decision which the City may enforce in a court of law, and

(7) that the contractor must comply with the decision within 5 business days of the City's decision becoming final, including payment of liquidated damages, if any, together with simple annual interest of 10% from the date that payment should have been made.

(b) (1) While liquidated damages in the maximum amount set forth in this section are a reasonable estimate of harm to the City caused by the contractor's non-compliance with contract provisions required by this Article, the Director of DPH, or his or her designee, may determine that less than the full amount is warranted depending on the circumstances of each case. The Director of Public Health, or his or her designee, shall adopt a schedule for liquidated damages based on the degree of harm that the violation causes, the number of days the violation occurs, and the number of shelter clients affected by the violation. In addition, the Director of Public Health, or his or her designee, shall consider the following factors in determining the amount of liquidated damages, if any, to impose against a contractor who fails to comply with contract provisions required by this Article:

(A) the size of the contractor's business;

(B) the contractor's good faith efforts to comply with contract provisions required by this Article;

(C) the gravity of the violation;

(D) whether the contractor has a history of violations of contract provisions required by this Article;

(E) whether the contractor has failed to comply with recordkeeping requirements imposed by contract provisions under this Article; and

(F) whether the imposition of liquidated damages would undermine the purpose of this Article by imposing unreasonable financial burdens on the contractor, thereby imperiling the contractor's ability to continue complying with contract provisions required by this Article.

(c) (1) Within 15 days of receiving an appeal from the Director of Public Health, or his or her designee's final determination, the arbitration panel shall so inform the Shelter Monitoring

Committee, the contract monitor, the shelter operator, the Director of DPH, or his or her designee, and/or their respective counsel or authorized representative. The arbitration panel may assign a hearing officer within the panel to collect and review evidence and to make recommendations to the full arbitration panel, but the full arbitration panel must issue written findings and orders consistent with subsection (4), below.

(2) The arbitration panel shall promptly set a date for a hearing. The hearing must commence within 45 days of the notification of the appeal to the arbitration panel and conclude within 75 days of such notification, not including the issuance of a decision, unless all parties agree to an extended period. If a contractor appeals the Director of DPH, or his or her designee's initial determination but fails to attend a hearing set under this subsection, the Director of DPH, or his or her designee's initial determination shall become final.

(3) The Director of DPH, or his or her designee, shall have the burden of producing evidence demonstrating the contractor's violation of contract provisions required by this Article and warranting imposition of liquidated damages. The contractor shall have the right to present evidence on its behalf in response to any alleged violation of contract provisions required by this Article.

(4) Within 30 days of the conclusion of the hearing, the arbitration panel shall issue a written decision affirming, modifying, or vacating the City's determination relating to the violation of the contract obligations that this Article imposes, the corrective action that the contractor must take to remedy any violation, and the amount of liquidated damages to be assessed, if any. The arbitration panel's decision shall consist of findings and a determination, which shall be the City's final decision.

(5) The contractor shall comply with the arbitration panel's decision, including the payment of liquidated damages, within 5 business days of service of the decision. Service shall be made by first class mail to the contractor's ad-

dress of record. Failure to pay liquidated damages within the time specified in this ordinance shall result in interest on the unpaid damages at the simple annual interest rate of 10% from the day that such damages were due.

(6) The contractor may seek review of the arbitration panel's decision only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure, section 1094.5, as may be amended from time to time.

(7) When a contractor fails to take corrective action or pay damages within the time required by the provisions of this section, the City may immediately pursue all available remedies against the contractor for breach of contract, including debarment proceedings where applicable and filing a civil action to recover liquidated damages due under this Article.

(8) The failure of the City to comply with the time requirements of this section shall not cause the City or the arbitration panel to lose jurisdiction over an appeal from the City's determination filed under this section.

(d) Liquidated damages obtained pursuant to contract provisions required by this Article shall be deposited in the City's general fund.

(e) Six months after the effective date of this ordinance, the Director of DPH shall provide a written report to the Board of Supervisors that shall address the following issues; the level of shelter compliance with this Chapter; the number of cases that have resulted in the imposition of liquidated damages; the number of cases that have been referred to an arbitration panel; and the financial impact of this Chapter, if any, on DPH. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.407. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding

shall not affect the validity of the remaining portions thereof. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

SEC. 20.408. LIMITED TO PROMOTION OF GENERAL WELFARE.

In undertaking the adoption and enforcement of this Article, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its commissions, departments, officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 50-08, File No. 071518, App. 3/28/2008)

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CHAPTER 21: ACQUISITION OF COMMODITIES AND SERVICES

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SEC. 21.01. SCOPE OF CHAPTER.

Chapter 21 governs the acquisition of Commodities and Services. Chapter 21 shall not apply to contracts for public works or improvements or to contracts for the purchase, sale or lease of any interest in real property. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.02. DEFINITIONS.

As used in this Chapter the following words shall have the following respective meanings:

(a) "Bid" shall mean a bid, quotation, or other offer, other than a Proposal, from a person or entity to sell a Commodity or Service to the City at a specified price.

(b) "Bidder" shall mean any person or entity which submits a Bid.

(c) "City" shall mean the City and County of San Francisco.

(d) "COIT" shall mean the Committee on Information Technology of the City and County of San Francisco.

(e) "Commodity" shall mean products, including materials, equipment and supplies, purchased by the City. "Commodity" shall specifically exclude legal and litigation related contracts or contracts entered into pursuant to settlement of legal proceedings, and employee benefits, including, without limitation, health plans, retirement or deferred compensation benefits, insurance and flexible accounts, provided by or through the City's Human Resources Department or the Retirement Board.

(f) "Computer Store" shall mean the City-wide, multiple award contract for the procurement of certain Commodities and Services, which is administered by COIT for the benefit of City departments, awarded pursuant to the "Request for Proposal for Computer Hardware, Software, Peripherals and Appropriate Network, Consulting, Maintenance, Training and Support Services," and any successor contracts thereto.

(g) "Contractor" shall mean any corporation, partnership, individual, sole proprietorship, joint venture or other legal entity which enters into a contract to sell Commodities or Services to the City.

(h) "Contracting Officer" shall mean the City employee who is authorized to execute a contract, which may be either the department head or a person designated in writing by the department head, board or commission as having the authority to sign contracts for the department. A designation of authority to sign contracts on behalf of a department may specify authority to sign a single contract, specified classes of contracts, or all contracts entered into by a department.

(i) "Disadvantaged Business Enterprise" or "DBE" shall mean a private business located in and doing business in San Francisco with current revenues equal to or less than the limits set

for similar businesses eligible for certification by the Human Rights Commission as Minority Owned Business Enterprises (MBEs) or Women Owned Business Enterprises (WBEs). DBE status shall be based only on economic criteria, and shall not include consideration of race or gender. The Purchaser shall verify the DBE status of any

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Offeror to whom a small business set aside contract is proposed to be awarded prior to award.

(j) "Electronic" shall mean electrical, digital, magnetic, optical, electromagnetic or other similar technology for conveying documents or authorizations, excluding facsimile.

(k) "General services" shall mean those services that are not Professional Services. Examples of General Services include: janitorial, security guard, pest control, parking lot attendants and landscaping services.

(l) "Offer" shall mean a Bid or Proposal submitted to the City in response to an invitation for Bids or a Request for proposals. "Offer" may include a response to a request for qualifications if no further ranking prior to Contractor selection is contemplated by the procurement process.

(m) "Offeror" shall mean a person or entity that submits an Offer to the City to provide Commodities or Services.

(n) "Professional Services" shall mean those services which require extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field. Examples of professional service providers include licensed professionals such as architects, engineers, and accountants, and non-licensed professionals such as software developers and financial and other consultants.

(o) "Proposal" shall mean a response to a request for proposals issued by the City for Commodities or Services, or a response to a request for qualifications if no further ranking prior to contractor selection is contemplated by the procurement process.

(p) "Proposer" shall mean a person or entity that submits a Proposal in response to a request for proposals issued by the City.

(q) "Purchase order" shall mean an authorization document designated as such by the Purchaser for the procurement of Commodities

or Services, whether issued in a paper or electronic format, including blanket purchase orders for purchases involving multiple payments.

(r) "Purchaser" shall mean the Purchaser of Supplies of the City and County of San Francisco, or his or her designee(s).

(s) "Quotation" shall mean a Bid for Commodities or Services which is acquired without the use of advertising to solicit Bids.

(t) "Services" shall mean Professional Services and General Services. "Services" shall specifically exclude agreements making a grant of City funds to private entities for the purpose of providing a benefit to the public, which may include incidental purchases of commodities; legal and litigation related services or contracts entered into pursuant to settlement of legal proceedings; and services related to employee benefits, including, without limitation, health plans, retirement or deferred compensation benefits, insurance and flexible accounts, provided by or through the City's Human Resources Department or the Retirement Board.

(u) "Solicitation" shall mean an invitation for Bids, request for Quotations, request for qualifications, or request for Proposals issued by the City for the purpose of soliciting Bids, Quotations, or Proposals to perform a City contract. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.03. GENERAL AUTHORITY OF THE PURCHASER OF SUPPLIES.

(a) **Approval of Purchases.** The Purchaser shall purchase all Commodities or Services required by City departments and offices of the City, except as otherwise provided in the Charter and Municipal Code of San Francisco. The Purchaser shall, by regulation, designate and authorize appropriate department personnel to exercise the Purchaser's approval authority for contracts approved as provided in this section.

(b) **Purchases to be Made on Requisitions; Exception for Large Quantities or Common Use.** All purchases made by the Purchaser shall be made on the basis of requisitions

of ordering departments; except that Commodities and Services in common use by more than one department, or used in large quantities by a department may be purchased on the basis of the total of such requisitions or estimates previously filed from the various departments. The Purchaser is authorized to enter into City-wide requirements contracts for the purchase of indefinite quantities of Commodities or Services for the period of time and at prices set forth in the contract, under which any department may elect to order such Commodities or Services.

(c) **Standardization of Purchases.** The Purchaser may establish specifications, terms and conditions, and product tests to cover all Commodities and Services purchases of (i) large quantities, or (ii) recurring purchases, or (iii) Commodities or Services in common use by more than one department. The Purchaser may, as far as is practicable, standardize Commodities according to the use to which they are to be put, when two or more types, brands or kinds are specified or requested by individual departments.

(d) **Purchases of Commodities.** Purchases of Commodities shall be made in accordance with selection criteria or specifications furnished by the department requiring such Commodities whenever the need for particular selection criteria or specifications is peculiar to such department. For patented or proprietary Commodities sold by brand name, the purchaser may require each department requisitioning same by such brand name to furnish specifications of the Commodity requisitioned, and may advertise for Offers on the basis of such specifications, under conditions permitting manufacturers of, or dealers in other products made and sold for the same purpose, to make Offers on such specifications or on the specifications of their own product. If the Purchaser recommends the acceptance of the lowest or best Offer, stating the Purchaser's reasons in writing therefor, and if the department head concerned recommends the acceptance of any other Offer on such proprietary Commodities, stating the department's reasons in writing therefor, the award shall be determined by the Controller.

(e) **Procurement Of Vehicles for Use of City Officials And Employees.**

(1) When purchasing, leasing, or otherwise procuring passenger vehicles, including passenger cars, passenger vans, sport utility vehicles, cargo vans and pickup trucks up to and including one ton in payload, departments shall request vehicles of the same functional type and passenger capacity approved by the Board of Supervisors in the budget.

(2) In evaluating vehicle purchase requests, the Purchaser is authorized to consider the price, durability, fuel efficiency, resale value, expected repair and maintenance cost, and all other factors, including options and accessories that may among other considerations enhance the safety and resale value of the vehicle and that bear directly on the total cost to the City of the vehicle in relationship to the service it will render.

(3) The Purchaser may develop sets of general specifications, including optional equipment, for purchases of compact, mid-size and full-size passenger cars or may specify vehicles by proprietary brand name when purchasing additional vehicles for an existing fleet. The specifications shall note the major items of standard equipment of such vehicles and may include, in the Purchaser's discretion, optional equipment which the Purchaser has determined should be ordered on City passenger cars. When procuring passenger cars, the purchaser shall include this group of options, to the extent possible, even if the department which will use the car does not request them.

If a department requests optional equipment that is not part of the Purchaser's group of options and which would cost in excess of a dollar limit to be set by the Purchaser in regulations, the department must either:

(A) Itemize the equipment in the description of the vehicle itself, when the vehicle purchase is reviewed as part of the City's annual budget process, and obtain the Board's approval of the vehicle as equipped; or

(B) Obtain the approval of the Mayor's Budget Office before submitting a requisition to the Purchaser.

(4) If a department desires to procure a passenger vehicle that is upgraded in terms of the functional type or capacity from what was approved in the budget, then the department must first obtain the approval of the Mayor's Budget Office before submitting a requisition to the Purchaser.

(5) This section shall not apply to the procurement of mass transit vehicles over one ton or other specialized vehicles as defined in the Purchaser's regulations.

(f) **Payment procedures.** The Purchaser and Controller shall establish procedures to approve all bills and vouchers for Commodities and Services. All approvals required pursuant to such procedures must be obtained before the controller shall draw and approve warrants therefor.

(g) **Storerooms and Garages.** The Purchaser shall have charge of a garage and shop for the repair of City equipment, and of the purchaser's storerooms and warehouses for the City and the personnel assigned thereto.

(h) **Leasing Of Equipment From Non-profit Corporations Without Competitive Bidding.** Notwithstanding any other provisions of this Code, the Purchaser is authorized to award a contract, without issuing Solicitations, to a non-profit corporation for the leasing of equipment; provided, that the non-profit corporation has been formed for the purpose of aiding and assisting the City, and the formation of the non-profit corporation has been approved by resolution of the Board of Supervisors.

(i) **Disposal of Surplus.** Commodities which have been determined to be surplus to City needs shall be disposed of in a manner which will best serve the interests of the City. For the purposes of this section, the interests of the City shall include the City's ability to maximize the City's economic return on surplus Commodities, the City's interest in maximizing the re-use of surplus Commodities by public entities, non-profit organizations and schools, and the City's interest in avoiding any unnecessary additions to the waste stream by maximizing the re-use and recycling of surplus Commodities. Disposal of surplus Commodities may include sales to, ex-

changes with, or donation to public entities, non-profit organizations, and private organizations for a public purpose, or donation to private entities for recycling of parts or materials. The Purchaser may maintain lists of all known local resources for transfer of surplus Commodities to public entities, non-profit organizations, and private organizations for a public purpose, and for the recycling of parts. The Purchaser shall have the authority to require the transfer of surplus property in any department to the Purchaser's stores or to other departments.

(1) The Purchaser of supplies shall have the authority to exchange Used commodities to the advantage of the City, to advertise for Bids, and to sell Commodities belonging to the City on the recommendation of a department head that such Commodities are surplus to the needs of the department.

(2) The Purchaser shall have the authority to donate obsolete, used or surplus Commodities if a department head states in writing that such Commodities are surplus to the needs of the department. The Purchaser shall document in writing each donation.

(A) Donations of Commodities meeting the criteria listed above may be offered to public entities, non-profit organizations, or private organizations serving the public. The order of priority for donations shall be to entities or organizations:

(i) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in San Francisco;

(ii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in the Bay Area;

(iii) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in the United States;

(iv) Engaged in distributing the surplus Commodities offered at no cost or for a nominal fee to non-profit organizations, schools, or low-income individuals or families that are physically located in foreign countries;

(v) Engaged in recycling the surplus Commodities, including parts or materials.

(B) Surplus medical supplies that are no longer in compliance with Federal Drug Administration regulations may be offered to entities and organizations which are engaged in distributing or administering the surplus medical supplies at no cost or for a nominal fee to low-income individuals or families in foreign countries.

(C) To the extent that more than one organization meets the criteria in a category listed above, surplus Commodities shall be made available on a rotational basis to entities and organizations in the same category. If there is a need to dispose of surplus Commodities and no entity or organization meeting the criteria noted in Section 21.03(i)(2)(A) can be located to receive a donation, the Purchaser is authorized to utilize other means that may be available to dispose of such Commodities in a manner that will best serve the interests of the City.

(j) **Information Technology Purchases.** All contracts for the acquisition of information technology Commodities or Services shall be made by the Purchaser, under the direction and supervision of COIT. "Information technology" Commodities and Services which are subject to this requirement shall be defined in regulations adopted by the Purchaser, the Department of Telecommunication and Information Services and COIT.

(k) **Rules And Regulations.** The Purchaser, with the approval of the Director of Administrative Services and the Controller, shall establish rules and regulations for the purpose of implementing the provisions of this Chapter. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.04. DIRECT PURCHASING AUTHORITY OF DEPARTMENTS.

(a) Department heads shall be authorized to purchase Commodities or Services directly and without the approval of purchasing, as provided in the Charter or Municipal Code of San Francisco, or in the following circumstances:

(1) When such purchase is recommended by a department head and is approved by the Purchaser. The Purchaser's approval of direct department purchases may be for individual contracts or for classes of contracts anticipated to be required by the department.

(2) Departments may directly enter into contracts with other public entities for the purpose of fulfilling their governmental functions, which may include the provision or exchange of Commodities or Services incidental to the purpose of the contract.

(3) Departments may directly enter into contracts for the investment of trust moneys and agreements relating to the management of trust assets.

(4) Purchases of works of art or artifacts for museums or to display in public areas, specialized art restoration, insuring, transport, storage, curation and conservation services.

(5) The Risk Manager is authorized to purchase insurance and expert services in forms, amounts and by procedures as approved by the Board of Supervisors in the annual Risk Management Budget.

(6) The General Manager of the Public Utilities Commission may directly purchase water, power or natural gas, the conveyance or transmission of same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as required for assuring reliable services in accordance with good utility practice, to or on behalf of the San Francisco Public Utilities Commission.

(7) Officers and employees of the City may contract directly for the provision of services related to travel required for official City business, subject to compliance with rules and regu-

lations established by the approving department and the Controller for reimbursement of such expenses.

(b) Nothing in this section is intended to affect the authorities granted to departments elsewhere in this Code or in the Charter. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.05. POWERS OF DEPARTMENTS.

(a) **Estimates of Requirements.** All departments shall file estimates of required Commodities and services at such time and in such manner as shall be determined by the Purchaser.

(b) **Procurement of Professional Services.** Departments shall be responsible for defining the scope of a project for contracting purposes, establishing fair evaluation criteria and selection processes for Solicitations, and for the negotiation and award of contracts for Professional Services, with the assistance of the Purchaser and the City Attorney, provided, however, that:

(1) If a proposed contract for Professional Services includes the procurement of Commodities, then the department shall seek prior Purchasing approval of the Solicitation document; and

(2) The Director of Purchasing shall be the Contracting Officer for Professional Service contracts unless a Contracting Officer other than the Purchaser is authorized to enter into the contract directly.

(c) **Cancellation of Purchase Contracts.** The Contracting Officer shall be the only person authorized to terminate a contract for cause or convenience.

(d) **Inspection of Purchases.** Departments shall make adequate inspection of all purchases. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.06. ELECTRONIC TRANSACTIONS.

(a) **Electronic Notification.** For purposes of this Chapter, if a requirement exists that a City official notify another City official of an

event, or send a report to another City official, the official with that responsibility may use Electronic notification, rather than a physical document, to effect the notice.

(b) **Electronic Filing.** For purposes of this Charter, if a requirement exists that a City official keep a copy of a form or a document, the official may keep an Electronic record rather than a physical document, provided that the electronic record contains at least as much information as the physical form or document would have contained. Any departmental record retention policies applicable to physical records also apply to the corresponding Electronic records.

(c) **Other Electronic Transactions.** Where the Purchaser, in consultation with the Department of Telecommunications and Information Services and COIT, determines that the technology exists to provide assurance of authentication, message integrity, and nonrepudiation through secure and reliable Electronic transactions, the Purchaser may establish regulations for the use of Electronic transactions under this Chapter, including authorization, approval or execution of documents, placing orders with Contractors, receiving Offers, making determinations, or providing notice. Such regulations shall include appropriate security to prevent unauthorized access to the Solicitation, Offer, approval and award processes, and accurate retrieval and/or conversion of Electronic forms of such information into a medium that permits inspection and copying. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.1. COMPETITIVE SOLICITATION REQUIRED.

All City contracts for Commodities and/or Services shall be procured through competitive solicitation, except as otherwise authorized in this Code. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.2. ADVERTISING SOLICITATIONS.

Notices inviting Offers under the provisions of Sections 21.3 and 21.4 of this Chapter must be published in accordance with the Charter and

Municipal Code of San Francisco. At least five calendar days must intervene between the date of last publication and the time for filing such sealed Offers. The published notice must contain a general description of the Commodity or Service, the due date for Offers, and a City contact phone number. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.3. COMPETITIVE SEALED BIDDING.

(a) **Invitation for Bids.** Except as otherwise authorized in this Code, for any Commodity or General Services purchase estimated to cost in excess of \$50,000, an invitation for Bids may be issued to solicit Bids and shall include a purchase description and all contractual terms and conditions applicable to the procurement, including a reservation of the City's right to reject all Offers. It shall constitute official misconduct to divide any purchase into two or more units with the intent of evading the requirements of this section.

(b) **Bid Opening.** Bids shall be opened publicly by the Contracting Officer at the time and place designated in the Invitation for Bids in the presence of all Bidders who attend. Relevant information as the Purchaser may specify by regulation shall be recorded. Except for materials protected from disclosure pursuant to Administrative Code Section 67.24, the record and each Bid shall be open to public inspection following bid opening.

(c) **Bid Evaluation.** Bids shall be evaluated based on the requirements and specifications set forth in the Invitation for Bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the Bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, conversion costs and total or life cycle costs.

(d) **Correction, Withdrawal, or Rejection of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous

Bids before or after award, or cancellation of awards or contracts based on such Bid mistakes, shall be permitted in accordance with regulations promulgated by the Purchaser. After Bid opening, no changes in Bid prices or other provisions of Bids prejudicial to the interest of the City or fair competition shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of Bids, or to cancel awards or contracts based on Bid mistakes, shall be supported by a written determination made by the Purchaser. The Purchaser may reject all bids at any time prior to award.

(e) **Award.** The contract shall be awarded not less than five working days after Bid opening by written notice to the lowest responsible and responsive Bidder whose Bid meets the requirements and criteria set forth in the Invitation for Bids. Notice of all awards made pursuant to the provisions of this section shall be published as required by the Charter. In the event that all Bids exceed available funds and the lowest responsible and responsive bidder does not exceed such funds by more than 10 percent, the Purchaser is authorized in situations where time and economic considerations preclude resolicitation of work of a reduced scope to negotiate an adjustment of the Bid price, including changes in the Bid requirements, with the low responsive and responsible Bidder, in order to bring the Bid within the amount of available funds.

(f) **Awards in the Public Interest.** If the Purchaser finds that the public interest would be best served by accepting other than the lowest total or unit price the Purchaser is authorized to accept the Bid(s) that in the Purchaser's opinion will best serve the public interest, to make the awards and to enter into the necessary contracts. Prior to making an award to other than the lowest Bidder(s), the Purchaser shall submit a written statement of the basis for the finding to the Director of Administrative Services.

(g) **Additional Purchases.** Where the quantity of Commodities or General Services to be provided under a contract is fixed, the Contracting Officer may, within one year after award and

subject to the Contractor's consent, purchase additional quantities of the specific Commodities or General Services for which award was made at the award price or a lower price, in accordance with the Purchaser's regulations.

(h) **Multi-step Bidding.** A Contracting Officer may prequalify Bidders prior to issuing an Invitation for Bids based on prequalification criteria set forth in a Solicitation.

(i) **Bid Protests.** The procedure for resolving bid protests shall be established by regulations adopted by the Purchaser. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.4. INVITATIONS FOR COMPETITIVE PROPOSALS OR QUALIFICATIONS.

(a) **Authorization; Evaluation Criteria.** A Contracting Officer may issue a request for Proposals, or request for qualifications, for the selection of Professional Service Contractors following consideration of the evaluation factors set forth in the request for Proposals, which may include cost, except as prohibited by law. If a department determines that it would be in the best interests of the City to acquire combined Commodities and Services or General Services by means of a request for Proposals or qualifications, rather than an invitation for Bids, such request for Proposals or qualifications shall be issued by the Purchaser. A request for Proposals or qualifications for Professional Services may be issued directly by the department.

(b) **Negotiation.** The Contracting Officer is authorized to negotiate terms and conditions, including price, with the highest ranked Proposer. If the Contracting Officer cannot conclude a contract that, in the opinion of the Contracting Officer is in the City's best interest, the Contracting Officer may terminate negotiations with the highest ranked Proposer. In the event that the Contracting Officer cannot conclude negotiations with the next highest ranked Proposer on terms acceptable to the City, then the Contracting Officer may negotiate with each successively ranked proposer.

(c) **Requests for Qualifications.** A department may issue a request for qualification to determine the qualifications of prospective Contractors for particular types of Commodities and/or Services to be provided to that department. Prequalification may be for the purpose of issuing a further Solicitation to select from among the prequalified entities for a particular contract, or it may be for the purpose of maintaining a list from which Contractors will be selected for future contracts as needed by the department, or the department may select Contractor(s) based on ranking of responses to the request for qualifications. For the procurement of Commodities and Services for which lists of prequalified entities are created by a department, selection of a Contractor for a particular contract may be made without the use of a further Solicitation if the list is maintained by issuing a new request for qualifications at least once every two years. The Purchaser may also maintain City-wide lists of prequalified contractors.

(d) **Content of Requests for Proposals.** A request for Proposals shall specify evaluation criteria for selection, and shall reserve the right to reject or cancel the request for Proposals in whole or in part.

(e) **Mass-transit Vehicles.** Notwithstanding any other provision of the charter or laws of the City, the Public Transportation Department, through its department head and through the Purchaser is authorized to include among its purchasing specifications the use of negotiated procurement procedures for the purchase of mass-transit vehicles. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.5. OTHER PURCHASES.

Notwithstanding any other provision of this Chapter, procurement of the following shall be made in accordance with the Purchaser's regulations:

(a) Commodities or services where the total amount of the purchase does not exceed \$50,000.

(b) Commodities or services available only from a sole source.

(c) Perishable foods.

(d) Proprietary articles.

(e) Contracts involving a pilot project with a term not to exceed two years; provided, however, that any further procurement beyond the pilot project phase shall be subject to all applicable competitive procurement requirements.

(f) The Purchaser may designate a particular Solicitation as a small business set aside, and restrict competition for that contract to DBEs. Such set-aside shall not continue for more than two consecutive years for any particular contract, and the Purchaser shall not allocate an aggregate of more than ten million dollars per fiscal year for DBE set-aside contracts. The findings made by the Board of Supervisors with respect to contracting with local businesses in Administrative Code Section 12-D.A.2 are hereby incorporated by reference into this section.

(g) Commodities or Services purchased with federal grant funds, awarded for the purpose of enhancing security and overall preparedness to prevent, respond to, or recover from acts of terrorism, where the total amount of the purchase does not exceed \$100,000. Federal grant funds include federal monies awarded to the City through the state or other governmental entities. This subsection does not cover Commodities or Services identified by the grant as an administrative or management cost or expense. (Added by Ord. 156-99, File No. 990743, App. 6/2/99; Ord. 296-04, File No. 041450, App. 12/24/2004)

SEC. 21.6. WHEN NO VALID OFFERS ARE RECEIVED; MULTIPLE LOW OFFERS.

When a Contracting Officer issues a Solicitation for Commodities and/or Services and no responsive and responsible Offers are received, the Contracting Officer shall review the Solicitation to determine whether the Solicitation could be altered and reissued in a manner that would be likely to attract responsive offers. If the Contracting Officer determines that the lack of responsive Offers is not due to the content of the Solicitation, the Contracting Officer may purchase the Commodities or Services called for from any source. If two or more Bids received are

for the same amount or unit price and Such Bids are the lowest Bids from responsive and responsible Bidders, then the Contracting Officer may award a contract to either of the lowest responsive and responsible Bidders in accordance with the Purchaser's regulations. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.7. REJECTION AND READVERTISING FOR PROPOSALS.

The Contracting Officer, in his or her sole discretion, is authorized to cancel any Solicitation or reject any and all Offers, in whole or in part, prior to award, and may readvertise under such terms as the Contracting Officer deems to be in the City's best interests. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.8. MULTIPLE AWARD CONTRACTS.

(a) **Generally.** A Contracting Officer may award contracts to more than one Offeror if the Contracting Officer determines that it is in the City's best interest to have more than one Contractor provide one or more similar Commodities and/or Services and the Solicitation states that the contract may be subject to multiple award. The Contracting Officer may either require all multiple award contractors to do business with the City under a single set of terms and conditions, or if the Solicitation is made by means of a request for Proposals, may negotiate separate terms and conditions with each offeror for specified Commodities and/or Services. Following multiple award and in the administration of multiple award contracts, the Contracting Officer shall use best efforts to fulfill the policies of Chapter 12-D.A of this Code.

(b) **Computer Store.** Any department or other entity ordering Commodities or Services through the Computer Store shall pay an administrative fee of up to 1.9 percent of the total purchase price of Commodities and Services purchased through the Computer Store. Such administrative fee shall be used solely to pay for actual costs of administering the Computer Store contract for the benefit of City departments. Beginning in fiscal year 1999-2000, COIT shall

annually review the administrative costs from the previous fiscal year and may reduce the administrative fee to conform to projections of actual administrative costs for the succeeding fiscal year. Any excess funds collected during one fiscal year shall be applied by COIT to reduce the administrative fee in the following fiscal year. Such administrative fee shall be collected from procuring departments by Computer Store vendors for each transaction and shall be paid to and disbursed by the Controller in accordance with procedures to be established by the Controller. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.9. MULTIPLE YEAR CONTRACTS; OPTIONS TO EXTEND OR RENEW.

(a) A contract for multiple years or with options to extend the term or renew the contract may be used when:

(1) The City anticipates that the need for acquisition of the Commodities or Services that are the subject of the contract will extend beyond a single fiscal year in the case of multiple year contracts, or beyond the initial contract period in the case of renewals or extensions of contracts; and

(2) The initial term of the contract and conditions for renewal or extension are included in the Solicitation, which Solicitation shall not provide for renewals or extensions of the contract for a period in excess of 10 years from the date of the initial contract; and

(3) Funds are available for the first fiscal year at the time of contracting; and

(4) Payment and performance obligations for succeeding fiscal years are made subject to the appropriation of funds for the contract.

(b) Departments are prohibited from entering into contracts involving expenditure of City funds with provisions that would automatically renew the contract term without further action by the City. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.10. BOND MAY BE REQUIRED.

Prior to the initiation of performance, the Contracting Officer may require labor, materials or fidelity bonds, or a corporate surety bond conditioned for the faithful performance of any contract for the purchase of Commodities or services. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.11. BID SECURITY.

If required by the Contracting Officer in the Solicitation, an Offer shall be accompanied by a deposit in the form of a certified or cashier's check on a solvent bank, or money order, or bid bond, payable on sight to the City in the amount fixed in the Solicitation, which amount shall not exceed 10 percent of the estimated cost of the Commodities or Services to be furnished. However, any regular or continual offeror may, in lieu of the deposit above mentioned, file a corporate surety bond in an amount to be fixed by the Controller to serve as security for a period of at least one year that the Offeror will enter into the contract, and during the contract period, furnish any required performance bond for any and all contracts awarded to that Offeror, with provision for forfeiture under the surety bond in any case of failure, neglect, or refusal to do so. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.12. APPROVAL OF SURETIES.

The Controller shall approve the sufficiency of assets and qualifications of all sureties submitting any bond or security which is required under the provisions of Section 21.10 and 21.11 of this Chapter. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.13. PROCEDURE UPON FAILURE TO FILE REQUIRED BOND.

If any Offeror to whom a contract is awarded under the provisions of this Charter shall fail to file any required bond within 10 working days after receiving notice to file such bond, the Purchaser may deposit any security required to be filed under the provisions of Section 21.11 of this Chapter in the treasury for collection. The amount thereof shall be retained by the City as liqui-

dated damages for failure of the Offeror to file such bond. Neither the deposit nor the proceeds thereof shall be returned to such defaulting Offeror; provided, however, that upon the recommendation of the department utilizing the Commodities or Services to be provided under the contract, the Purchaser may approve the return of the amount of the Bid security to excuse a forfeiture under such Bid security.

Demand upon an Offeror to file a bond, as hereinbefore set forth, may, at the option of the Purchaser, be made by mail or by facsimile, addressed to the Offeror on whom it is to be served, at his or her mailing address or facsimile number, as set forth by the Offeror in the Offer. The service is complete at the time of deposit in the mail or machine confirmation of the facsimile, and the 10-day period shall commence on the first day following such deposit in the mail.

The Purchaser shall have the authority to extend the period for the deposit of any required bond, except a Bid bond, whenever in the Purchaser's judgment, circumstances warrant an extension.

In all cases of forfeiture hereunder, the amount of the forfeiture after collection by the City shall be entered as a credit to the General Fund. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.14. CONTRACTORS REQUIRED TO OBTAIN BUSINESS TAX REGISTRATION CERTIFICATE.

If an Offeror must possess a Business Tax Registration Certificate issued by the Tax Collector, but has failed to obtain one, the Contracting Officer shall not execute the contract, except in case of emergency as defined in Section 21.15 of this Chapter. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.15. EMERGENCY PROCUREMENT PROCEDURES.

(a) The Board of Supervisors hereby declares that an actual emergency shall exist when it becomes necessary to immediately procure Commodities or Services to make repairs, to

safeguard the lives or property of the citizens or the property of the City or to maintain public health or welfare as a result of extraordinary conditions created by war, epidemic, weather, fire, flood, earthquake or other catastrophe, or the breakdown of any plant equipment, structure, street or public work.

(b) For any Commodities or Services that would normally be procured by the Purchaser, a contract may be executed by the Purchaser in the most expeditious manner, and shall be promptly confirmed by issuance of a regular purchase order.

(c) The department head responsible for the operations for which Commodities or Services are needed may also enter into a contract directly in the most expeditious manner necessary in order to respond to the emergency; however, if the emergency permits, the department head shall first secure the written approval of the president of the board or commission concerned, or from the Mayor or the Mayor's designee for any department under the Mayor's jurisdiction, and in all cases the approval of the Board of Supervisors must be obtained for any contract in excess of \$100,000. If the emergency does not permit such approvals to be obtained before the contract is executed, such approvals shall be obtained as soon thereafter as it is possible to do so.

(d) The Purchaser or the department, as the case may be, shall attempt to obtain at least three Bids for emergency purchases.

(e) The Board of Supervisors hereby declares that an actual emergency shall exist during a period of material shortages when goods meeting the exact specifications as ordered are not procurable. When such goods are immediately required, the Purchaser, with the approval of the Director of Administrative Services, shall have authority to accept satisfactory substitutes and to make proper price adjustments therefor; provided, that if such price adjustment should increase the contractual obligation by more than 10 percent, the Purchaser shall first obtain approval by the Controller, who shall reserve the

additional amount of money required to meet the increased obligation. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.16. USE OF PURCHASING AGREEMENTS OF AND RECIPROCAL AGREEMENTS WITH OTHER PUBLIC AND NON-PROFIT AGENCIES; SOLICITATIONS FOR MULTIPLE DEPARTMENTS.

(a) Notwithstanding any other provisions of this Municipal Code, in cases where the Purchaser deems that it is in the City's best interests to do so, the Purchaser is authorized, subject to the Board of Supervisors' approval by Resolution, to sell to, acquire from, participate in, sponsor, conduct or administer cooperative purchasing agreements with or made available by any public agency or non-profit made up of multiple public agencies in California or elsewhere, and may enter into reciprocal agreements with such agencies for the cooperative use of Commodities or Services or the common use or lease of facilities, under the terms agreed upon between the parties.

(b) Notwithstanding any other provisions in this Municipal Code, the Purchaser may utilize the competitive procurement process of any other public agency or non-profit made up of multiple public agencies to make purchases of Commodities or Services for the use of the City under the terms established in that agency's competitive procurement process and as agreed upon by the City and the procuring agency, upon making a determination that (i) the other agency's procurement process was competitive or the result of a sole source award, and (ii) the use of the other agency's procurement would be in the City's best interests.

(c) Departments may utilize the results of competitive Solicitation by other City departments if such potential use by other City departments is specified in the Solicitation. (Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. 115-05, File No. 050595, App. 6/17/2005)

SEC. 21.17. CONTRACTS TO BE IN WRITING.

All purchases in excess of \$2,500 shall be by written contract or other instrument. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.18. CONTRACTS TO BE IN TRIPLICATE; DISPOSITION OF CONTRACTS.

At a minimum, all Purchasing contracts, excluding Purchase Orders and contracts executed electronically, shall be executed in triplicate. One original shall be retained by the ordering department, one original shall be retained by the Purchaser, and one original shall be provided to the contractor. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.19. CONTRACT TERMS—GUARANTEED MAXIMUM COSTS.

All contracts entered into on behalf of the City for Commodities or Services to be purchased at the expense of the City shall contain a paragraph stating all of the following:

(a) The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.20. CONTRACT TERMS—INSURANCE.

All City contracts subject to this Chapter must conform to the insurance requirements established by the Risk Manager. The Risk Manager shall develop uniform insurance requirements for City contracts subject to this Chapter and shall publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and update said insurance requirements annually. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.21. CONTRACT TERMS—INFRINGEMENT INDEMNITY.

Each Contractor entering into a contract with the City that could involve the Contractor's provision of intellectual property to the City must save, keep, hold harmless and fully indemnify the City and any of its officers or agents from all damages, or claims for damages, costs or expenses in law or equity that may at any time arise or be set up for infringement of the patent rights, copyright, trademark or other intellectual property claims of any person in consequence of the use by the City, or any of its officers or agents, of articles to be supplied under such contract and of which the contractor is not the patentee or assignee or has not the lawful right to sell the same. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.22. CONTRACT TERMS—ASSIGNMENT.

No contract shall be assigned, except by written instrument executed and approved in the same manner as the original contract, which instrument shall include the signature of the assignee. The Contracting Officer shall notify the Controller in writing of such assignments. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.23. CONTRACT TERMS—INCIDENTAL DAMAGE WAIVERS; LIABILITY CAPS.

In any contract for Commodities or Services, the Contracting Officer is hereby authorized,

with the approval of the City Attorney, to waive future City rights to incidental and consequential damages arising from the performance of the contract, or to agree to limit damages caused by the contractor's negligence to a specified amount. The factors to be evaluated in determining whether damages should be waived or capped in a particular case shall include but are not limited to:

(a) Whether, in light of insurance and bond requirements, the performance of the contract is likely to create undue risk of damages to the City;

(b) Whether the language proposed in the contract waiving future claims to incidental and consequential damages or limiting the contractor's liability for damages caused by the contractors negligence is standard in the industry to which the contract relates;

(c) The best interests of the City. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.24. CONTRACT TERMS—CONTRACTS EXCEEDING \$10,000,000.

Chapter 12-D.A shall not be applicable to any contract for the purchase of Commodities or Services estimated to cost in excess of \$10,000,000. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.25. PREVAILING RATE OF WAGES IN MOTOR BUS SERVICE CONTRACTS.

In the case of any contract for Services wherein motor bus service is to be rendered to the general public on any facility owned by the City, or in the case of any contract for the transportation within the boundaries of the City of any Commodities owned or in the possession of the City, the Purchaser, on recommendation of the department head concerned and approval of the Mayor or the Mayor's designee or the board or commission in charge of such department upon the ground that the public interest would be best served by requiring the inclusion of such a provision in the contract, may require that any person performing labor thereunder shall be paid not less than the highest general prevailing

rate of wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the contract is being performed, as determined by the Civil Service Commission; provided, however, if such a provision is to be included in the contract the notice inviting offers under Section 21.2 of this Code must call attention of Offerors to the requirements of said provision. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.25-1. PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR JANITORIAL SERVICES; NONPROFIT ORGANIZATIONS EXCLUSION; SMALL BUSINESS EXCLUSION.

Every Contract issued by the City and County of San Francisco for Janitorial Services to be performed at any facility owned or leased by the City and County of San Francisco, where such work is to be done directly under the contract awarded (a "prime contract") must require that any individual performing Janitorial Services thereunder be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Contract is being performed, as determined by the Civil Service Commission.

(a) **Exclusions.** This Section shall not apply to the following:

(1) **Non-Profit Exclusion.** This Section shall not apply to a Contract where the Janitorial Services are to be performed by a non-profit organization that provides job training and work experience for disadvantaged individuals in need of such training.

(2) **Small Business Exclusion.** This Section shall not apply to any contracting party employing fewer than 10 employees. For purposes of this exclusion, the term "employees" excludes owner-operators and members of an owner-operator's Immediate Family.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply to the terms used herein:

(1) "Contract" shall mean an agreement for Janitorial Services to be performed at the expense of the City and County of San Francisco or

to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County of San Francisco, and does not include property contracts, contracts for the sale of goods, subcontracts, contracts issued by the San Francisco Airport Commission or to be performed at any facility owned, leased or otherwise under the jurisdiction of the San Francisco Airport Commission, agreements entered into before the effective date of this Section, or contracts for a cumulative amount of \$10,000 or less per janitorial service provider in each fiscal year.

(2) "Contracting Officer" shall mean any officer or employee of the City and County of San Francisco authorized to enter into a Contract on behalf of the City and County of San Francisco.

(3) "Contractor" shall mean any Person who submits a bid and/or enters into a Contract with the City and County of San Francisco.

(4) "Immediate Family" shall mean grandparents, grandchildren, parents, children, brothers and sisters, spouses and domestic partners, nieces and nephews, and aunts and uncles.

(5) "Janitorial Services" shall mean maintenance and cleaning services on property owned or leased by the City and County of San Francisco.

(6) "Person" shall include any individual, firm, proprietorship, partnership, corporation or combination thereof.

(7) "Prevailing Rate of Wages" shall mean that rate of compensation being paid to a majority of workers engaged in a specified category of personal services, if a majority of such workers be paid at a single rate; if there be no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid the greatest number of workers.

(8) "Subcontract" shall mean and include any agreement under or subordinate to a prime contract or lease.

(c) **Determination of Prevailing Rate of Wage.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private

employment in the City and County of San Francisco for Janitorial Services, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, on or before the first Monday in November of each year, data as to the Prevailing Rate of Wages for Janitorial Services as paid in private employment in the City and County of San Francisco, including wages for overtime and holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for Janitorial Services as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(d) **Noncompliance with Wage Provisions; Termination; Penalty.** Where the Contracting Officer determines that a Contractor for Janitorial Services may have violated the prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the contract, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including but not limited to payroll records, the truth

and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to individuals performing Janitorial Services under a Contract for Janitorial Services, the Contractor shall have "cured the violation" once the Contractor reimburses such individuals by paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section. In addition to, or instead of terminating the contract, where the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer may assess a penalty (a "willful violation penalty") in an amount not more than 10 percent of the dollar amount of the contract, such sums to be deposited in the fund out of which the Contract is awarded. The Contracting Officer may impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(e) **Collective Bargaining Agreements.** Notwithstanding anything to the contrary in this Section, if a Contract for Janitorial Services conflicts with an existing collective bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to make good faith efforts to comply with the requirements of its Contract for Janitorial Services that do not conflict with the collective bargaining agreement.

(f) **Preemption.** Nothing in this Section shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

(g) **Effective Date and Application.** This Section shall become effective 30 days after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing agreement to which the City is a party, unless such pre-existing agreement has been amended after the effective date of this Section.

(h) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable. (Added by Ord. 222-99, File No. 990877, App. 8/6/99)

SEC. 21.25-2. PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION REQUIRED FOR WORKERS IN PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR STORAGE FACILITIES FOR AUTOMOBILES.

Every Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco must require that any Employee working in such public off street parking lot, garage, or storage facility for automobiles be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, as determined by the Civil Service Commission.

(a) **Definitions.** For purposes of this Section, the following definitions shall apply to the terms used herein:

(1) "Contracting Officer" shall mean any officer or employee of the City and County of San Francisco authorized to enter into a Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco.

(2) "Contractor" shall mean any Person who submits a bid and/or enters into a Lease, Management Agreement, or Other Contractual Arrangement with the City and County of San

Francisco for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco as set forth in this Section.

(3) "Employee" shall mean any individual performing work in one of the following classifications: Washing; Polishing; Lubrication; Rent-Car Service; Parking Vehicles; Cashiers; Attendants; Checking Coin Boxes; Non-Attendant Parking Lot Checking; Daily Ticket Audit; Traffic Directors; Shuttle Drivers; and all other incidental duties, whose primary place of employment is in public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco for the Contractor. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would be so defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required occupational license.

(4) "Lease, Management Agreement, or Other Contractual Arrangement" shall mean an agreement with the City and County of San Francisco for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco.

(5) "Person" shall mean an individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts, or any combination thereof.

(6) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.

(7) "Public Off-Street Parking Lot, Garage, or Automobile Storage Facility" shall mean any off-street parking lot, garage, or automobile storage facility that is operated on property owned or leased by the City and County of San Francisco.

(8) "Subcontract" shall mean and include any agreement under or subordinate to a prime Lease, Management Agreement, or Other Contractual Arrangement.

(b) **Determination of Prevailing Rate of Wage.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for individuals working in off-street parking lots, garages, or automobile storage facility, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the effective date of this Section, and on or before the first Monday in November of each subsequent year, data as to the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid in private employment in the City and County of San Francisco, including wages or overtime and holiday work, and the Board Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service

Commission, but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(c) **Transition Employment Period.** All Leases, Management Agreements, or Other Contractual Arrangements covered by this Section shall impose the following obligations on the Contractor for Employees who work at least 15 hours per week

(1) Where the Contracting Officer has given notice that a Lease, Management Agreement, or Other Contractual Arrangement has been terminated or ended, or where a Contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending Contractor shall, within ten days thereafter, provide to the successor Contractor, the name, date of hire, and employment occupation classification of each Employee who work at least 15 hours per week employed at the site or sites covered by the prospective Contractor at the time of the Lease, Management Agreement, or Other Contractual Arrangement termination. This provision shall also apply to the subcontractors of the terminated Contractor.

If the terminated Contractor has not learned the identity of the successor Contractor, if any, by the time that notice was given of the Lease, Management Agreement, or Other Contractual Arrangement termination, the terminated Contractor shall obtain such information from the Contracting Officer. If a successor Contractor has not been awarded by the end of the 10 day period, the employment information referred to earlier in this subsection shall be provided to the Contracting officer at such time. Where a subcontractor has been terminated prior to the termination of the Contract, the terminated Subcontractor shall for the purposes of this Section be deemed a terminated Contractor.

(2) A successor Contractor shall retain, for a 90 day transition employment period, Employees who have worked at least 15 hours per week and have been employed by the terminated Contractor or its subcontractors, if any, for the preceding

twelve months or longer at the site or sites covered by the Lease, Management Agreement, or Other Contractual Arrangement, providing that just cause does not exist to terminate such Employee. The predecessor contractor's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor. This requirement shall be stated by the City in all initial bid packages involving Leases, Management Agreements, or Other Contractual Arrangements governed by this section.

(3) If at any time a successor Contractor determines that fewer Employees are required to perform the new Contract than were required by the terminated Contractor (and subcontractors, if any), the successor Contractor shall retain Employees by seniority within job classification.

(4) During such 90 day period the successor Contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the successor Contractor (or subcontractor) from which the successor Contractor (or subcontractor) shall hire additional Employees.

(5) Except as provided in Subsection (3) of above, during such 90 day period, the successor Contractor (or subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this Section. "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct while in the employ of the terminated Contractor or subcontractor that contributed to any decision to terminate the Contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

(6) At the end of such 90 day period, a successor Contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to this Section. If the Employee's performance during such 90 day period is satisfactory, the successor Contractor (or subcontractor) shall offer the Employee continued employment under the terms and conditions established by the successor Contractor (or sub-contractor) or as required by law.

(7) All contracts subject to this Section include a provision in which the contractor agrees to require subcontractor to comply with the obligation imposed by this Section.

(d) **Enforcement.**

(1) An Employee who has not been hired or has been discharged in violation of this Section by a successor Contractor or its subcontractor may bring an action in the Superior Court of the State of California, as appropriate, against the successor Contractor and, where applicable, its subcontractor, and shall be awarded back pay, including the value of benefits for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

(i) The average regular rate of pay received by the Employee during the last three years of the Employee's employment in the same occupation classification; or

(ii) The final regular rate received by the Employee.

(2) If the Employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(3) This Section is not intended to create a private right of action against the City and County of San Francisco.

(4) *Successor's Prior Employees.* Notwithstanding the provisions of Subsection (c) above, a successor Contractor or subcontractor may replace an Employee otherwise entitled to be retained pursuant to this Section with a person employed by the Contractor or subcontractor continuously for twelve months prior to the commencement of the successor Contract or subcontract in a capacity similar to that proposed under the successor Contract or subcontract. This Section shall apply only where the existing Employee of the successor Contractor or subcontractor would otherwise be laid off work as a result of the award of the successor contract.

(e) **Noncompliance with Wage Provisions; Termination; Penalty.** Where the Contracting Officer determines that a Contractor for the operation of a public off-street parking lot,

garage, or automobile storage facility may have violated the prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Lease, Management Agreement, or Other Contractual Arrangement, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to Employees working in public off-street parking lots or garages, the Contractor shall have "cured the violation" once the Contractor reimburses such Employees by paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section. In addition to, or instead of terminating the Lease, Management Agreement, or Other Contractual Arrangement, where the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer shall assess a penalty (a "willful violation penalty") in the sum of \$50 per day for each Employee for each day the Contractor or Subcontractor fails to pay the Prevailing Rate of Wages, such sums to be deposited in the fund out of which the Lease, Management Agreement, or Other Contractual Arrangement is awarded. The Contracting Officer shall impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(f) **Collective Bargaining Agreements.** Notwithstanding anything to the contrary in this Section, if a Lease, Management Agreement, or Other Contractual Arrangement conflicts with an existing collective bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to make good

faith efforts to comply with the requirements of its Lease, Management Agreement, or Other Contractual Arrangement that do not conflict with the collective bargaining agreement.

(g) **Preemption.** Nothing in this Section shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

(h) **Effective Date and Application.** This Section shall become effective 30 days after it is enacted, is intended to have, prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Lease, Management Agreement, or Other Contractual Arrangement to which the City and County of San Francisco is a party, unless such pre-existing Lease, Management Agreement, or Other Contractual Arrangement has been amended after the effective date of this Section.

(i) **Public Entities with Coterminous Boundaries with the City and County of San Francisco.** It is the policy of the City and County of San Francisco that all public entities with coterminous boundaries with the City and County of San Francisco, including but not limited to the Parking Authority of the City and County of San Francisco, adopt this prevailing wage and employee transition period policy. The Board of Supervisors of the City and County of San Francisco urges all public entities with coterminous boundaries with the City and County of San Francisco, including but not limited to the Parking Authority of the City and County of San Francisco, to adopt this prevailing wage and employee transition period policy.

(j) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable. (Added by Ord. 3-03, File No. 021504, App. 1/24/2003)

SEC. 21.25-3. PREVAILING RATE OF WAGES REQUIRED FOR THEATRICAL WORKERS.

Every Contract, Lease, Franchise, Permit, or Agreement awarded, let, issued, or granted by

the City and County of San Francisco for the use of property owned by the City and County of San Francisco must require that any Employee engaged in theatrical or technical services related to the presentation of a show, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Contract, Lease, Franchise, Permit or Agreement is being performed. All Contracts, Leases, Franchises, Permits or Agreements subject to this Section shall include a provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, the obligations imposed by this Section.

(a) **Definitions.** For purposes of this Section, the following definitions shall apply to the terms used herein:

(1) "Contracting Officer" shall mean any officer or employee of the City and County of San Francisco authorized to enter into a Contract, Lease, Franchise, Permit, or Agreement for the operation of property owned by the City and County of San Francisco.

(2) "Contract, Lease, Franchise, Permit, or Agreement" shall mean an agreement with the City and County of San Francisco for the use of property owned by the City and County of San Francisco, but shall not include any contract, lease, franchise, permit, or agreement for:

A. Celebration of a marriage, domestic partnership, or similar civil union,

B. The presentation of a show to which the public has free access when the show is in a public park, on a public street, or on property under the jurisdiction of the Port Commission.

C. Any permit or agreement to engage in film production pursuant to Chapter 57 of this Code or under the circumstances set forth in Section 57.7 of this Code,

D. Any show on property under the jurisdiction of the Arts Commission, or

E. In any circumstance where application of this Section would be preempted by federal or state law,

F. Any show for which the time required for the set-up is three hours or less and the number of individuals working on the set-up is no more than two.

(3) "Contractor" shall mean any Person who submits a bid and/or enters into a Contract, Lease, Franchise, Permit, or Agreement with the City and County of San Francisco for the use of property owned by the City and County of San Francisco as set forth in this Section.

(4) "Employee" shall mean any individual engaged in theatrical or technical services related to the presentation of shows, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services on property owned by the City and County of San Francisco for a Contractor or a subcontractor. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would be so defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required occupational license; or (c) employed less than 15 hours per week.

(5) "Person" shall mean any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts, or any combination thereof.

(6) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in theatrical or technical services related to the presentation of shows, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, if a majority of such workers are paid at a single rate; if there is no single rate being paid

to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.

(7) "Show" shall mean any live act, play, review, pantomime, scene, music, song, dance act, song and dance act, or poetry recitation provided in front of a live audience or recorded for the purpose of later presentation, but shall not include an event where a person solely plays pre-recorded music or pre-recorded performances so long as no other live performance is provided.

(8) "Subcontract" shall mean and include any agreement under or subordinate to a prime Contract, Lease, Franchise, Permit, or Agreement. "Subcontractor" shall mean any Person who enters into a Subcontract.

(b) **Determination of Prevailing Rate of Wage.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for individuals engaged in theatrical or technical services related to the presentation of shows, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the effective date of this Section, and on or before the first Monday in November of each subsequent year, data as to the Prevailing Rate of Wages for individuals engaged in theatrical or technical services related to the presentation of shows, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, including such rate of wages paid for overtime and holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for individuals engaged in theatrical or technical services related to the

presentation of shows, including, but not limited to, workers engaged in rigging, sound, projection, theatrical lighting, videos, computers, draping, carpentry, special effects, and motion picture services, including such rate of wages paid for overtime and holiday work, as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(c) **Noncompliance with Wage Provisions; Termination; Penalty.** Where the Contracting Officer determines that a Contractor for use of property owned by the City and County of San Francisco, or a subcontractor, may have violated the prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Contract, Lease, Franchise, Permit, or Agreement, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to Employees as required by this Section, the Contractor shall have "cured the violation" once the Contractor or Subcontractor reimburses such individuals by

paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section. In addition to, or instead of terminating the Contract, Lease, Franchise, Permit, or Agreement, where the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer or the Labor Standards Enforcement Officer may assess a penalty (a "willful violation penalty") of not more than 10 percent of the dollar amount of the Contract, Lease, Franchise, Permit, or Agreement, such sums to be deposited in the fund out of which the Contract, Lease, Franchise, Permit, or Agreement is awarded or, if none exists, the General Fund. The Contracting Officer or Labor Standards Enforcement Officer may impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(d) **Collective Bargaining Agreements.** Notwithstanding anything to the contrary in this Section, if a Contract, Lease, Franchise, Permit, or Agreement conflicts with an existing collective bargaining agreement to which a Contractor or Subcontractor is a party, the collective bargaining agreement shall prevail. However, the Contractor or Subcontractor will be obligated to make good faith efforts to comply with the requirements of its Contract, Lease, Franchise, Permit, or Agreement that do not conflict with the collective bargaining agreement.

(e) **Preemption.** Nothing in this Section shall be interpreted or applied so as to create any power or duty in conflict with any federal or State law.

(f) **Effective Date and Application.** This Section shall become effective 30 days after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract, Lease, Franchise, Permit, or Agreement issued or entered into by the City and County of San Francisco.

(g) **Applicability to Existing Contracts, Leases, Franchises, Permits, or Agreements.** This Section shall only apply to Contracts, Leases, Franchises, Permits, or Agreements entered into on or after the effective date of this Section.

(h) **Severability.** If any severable provision or provisions of this Section or any application thereof is held invalid, such invalidity shall not affect any other provisions or applications of the Section. (Added by Ord. 76-04, File No. 021505, App. 5/6/2004)

SEC. 21.25-5. PREVAILING RATE OF WAGES AND WORKER RETENTION REQUIRED FOR WORKERS ENGAGED IN HAULING OF SOLID WASTE GENERATED BY THE CITY IN THE COURSE OF CITY OPERATIONS.

(a) **Definitions.** For purposes of this Section, the following definitions shall apply to the terms used herein.

(1) "City" shall mean the City and County of San Francisco.

(2) "Contracting Officer" shall mean any officer or employee of the City authorized to enter into a Contract on behalf of the City.

(3) "Contract" shall mean an agreement with the City for the hauling of solid waste, generated by the City in the course of City operations, to be performed at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City. For purposes of this Section, "Contract" shall not include (a) a permit issued under the Refuse Collection and Disposal Ordinance, Appendix 1 of the San Francisco Administrative Code, or (b) a contract governed by the provisions of Chapter 6 of the San Francisco Administrative Code.

(4) "Contractor" shall mean any Person who submits a bid and/or enters into a Contract with the City for the hauling of solid waste generated by the City in the course of City operations.

(5) "Employee" shall mean any individual engaged in the hauling of solid waste, generated by the City in the course of City operations, for a Contractor or Subcontractor. For purposes of this Section, "Employee" shall not include a Person who (a) is a managerial, supervisory, or confidential employee, including those employees who

would be so defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required occupational license.

(6) "Hauling" of solid waste shall mean collection and transport of solid waste generated by the City in the course of City operations. For purposes of this Section, "hauling" shall not include "solid waste disposal" or "disposal" as defined in Section 40192 of the California Public Resources Code.

(7) "Person" shall mean any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts, or any combination thereof.

(8) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the hauling of solid waste, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.

(9) "Solid Waste" shall mean "solid waste" as defined in Section 40191 of the California Public Resources Code and includes material collected for "recycling" as defined in Section 40180 of the California Public Resources Code.

(10) "Subcontract" shall mean any agreement under or subordinate to a prime Contract.

(11) "Subcontractor" shall mean any Person who enters into a Subcontract with a Contractor.

(b) Prevailing Wage Rate Requirements.

(1) **Basic Prevailing Wage Rate Requirement.** Every Contract awarded by the City for the hauling of solid waste generated by the City in the course of City operations must require that any Employee engaged in the hauling of solid waste be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Contract is being performed.

(2) **Contractual Provision Concerning Prevailing Wage Rate Requirement.** All Contracts subject to this Section shall include a

provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, the prevailing wage rate requirement imposed by this Section.

(3) **Determination of Prevailing Rate of Wages.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City for individuals engaged in the hauling of solid waste, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, within 15 days after the effective date of this Section, and on or before the first Monday in November of each year, data as to the Prevailing Rate of Wages for individuals engaged in the hauling of solid waste, including such rate of wages paid for overtime and holiday work, and the Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for individuals engaged in the hauling of solid waste, including such rate of wages paid for overtime and holiday work, as paid for similar work in the City in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(4) **Enforcement of Prevailing Wage Rate Requirements.** Where the Contracting Officer determines that a Contractor for the hauling of solid waste, or a Subcontractor, may have violated the prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Contract, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor or Subcontractor fails to pay at least the Prevailing Rate of Wages to Employees as required by this Section, the Contractor shall have "cured the violation" once the Contractor or Subcontractor reimburses such individuals by paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section. In addition to, or instead of terminating the Contract, where the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer or the Labor Standards Enforcement Officer may assess a penalty (a "willful violation penalty") of not more than 10 percent of the dollar amount of the Contract, such sums to be deposited in the fund out of which the Contract is awarded or, if none exists, the General Fund. The Contracting Officer or Labor Standards Enforcement Officer may impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(c) **Worker Retention Requirements.**

(1) **Purpose.** The City has an important proprietary interest in maintaining the stability of the workforce engaged by a Contractor in the hauling of solid waste generated by the City in the course of City operations. Turnover of experienced workers resulting from a change in the

City's Contractor jeopardizes the quality, efficiency, and cost-effectiveness of service provided to the City under the successor Contract.

(2) **Worker Retention Requirements.** All Contracts covered by this Section shall impose the following obligations on the Contractor for Employees who work at least 15 hours per week under the Contract.

(i) Where the Contracting Officer has given notice that a Contract has been terminated or ended, or where a Contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending Contractor shall, within ten days thereafter, provide to the successor Contractor, the name, date of hire, and employment occupation classification of each Employee who works at least 15 hours per week under the Contract. This provision shall also apply to the Subcontractors of the terminated Contractor.

If the terminated Contractor has not learned the identity of the successor Contractor, if any, by the time that notice was given of the Contract termination, the terminated Contractor shall obtain such information from the Contracting Officer. If a successor Contractor has not been awarded by the end of the 10-day period, the employment information referred to in subsection (c)(2)(i) shall be provided to the Contracting Officer at such time. Where a Subcontractor has been terminated prior to the termination of the Contract, the terminated Subcontractor shall for the purposes of this provision be deemed a terminated Contractor.

(ii) A successor Contractor shall retain, for a 90-day transition employment period. Employees who have worked at least 15 hours per week and been employed by the terminated Contractor or its Subcontractors, if any, for the preceding twelve months or longer under the Contract, providing that just cause does not exist to terminate such Employee. The predecessor Contractor's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor. This requirement shall be stated by the City in all initial bid packages,

Requests for Proposals, and Requests for Qualifications involving Contracts governed by this Section.

(iii) If at any time a successor Contractor determines that fewer Employees are required to perform the new Contract than were required by the terminated Contractor (and Subcontractors, if any), the successor Contractor shall retain Employees by seniority within the job classification.

(iv) During such 90-day period the successor Contractor (or Subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the successor Contractor (or Subcontractor) from which the successor Contractor (or Subcontractor) shall hire additional Employees.

(v) Except as provided in subsection (c)(2)(iii), during such 90-day period, the successor Contractor (or Subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this Section. "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct while in the employ of the terminated Contractor or Subcontractor that contributed to any decision to terminate the Contract or Subcontract for fraud or poor performance, excluding permissible union-related activity.

(vi) At the end of such 90-day period, a successor Contractor (or Subcontractor, where applicable) shall perform a written performance evaluation for each Employee retained pursuant to this Section. If the Employee's performance during such 90-day period is satisfactory, the successor Contractor (or Subcontractor) shall offer the Employee continued employment under the terms and conditions established by the successor Contractor (or Subcontractor) or as required by law.

(3) Contractual Provision Concerning Worker Retention Requirements. All Contracts subject to this Section shall include a provision in which the Contractor agrees to comply with, and to require Subcontractors to comply with, the obligations imposed by this Section.

(4) Enforcement of Worker Retention Requirements. An Employee who has not been hired or has been discharged in violation of this Section by a successor Contractor or its Subcontractor may bring an action in the Superior Court of the State of California, as appropriate, against the successor Contractor and, where applicable, its Subcontractor, and shall be awarded back pay, including the value of benefits for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of (i) the average regular rate of pay received by the Employee during the last three years of the Employee's employment in the same occupation classification or (ii) the final regular rate received by the Employee. If the Employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(5) Successor's Prior Employees. Notwithstanding the provisions of subsection (c), a successor Contractor or Subcontractor may replace an Employee otherwise entitled to be retained pursuant to this Section with a person employed by the Contractor or Subcontractor continuously for twelve months prior to the commencement of the successor Contract or Subcontract in a capacity similar to that proposed under the successor Contract or Subcontract. This Section shall apply only where the existing Employee of the successor Contractor or Subcontractor would otherwise be laid off work as a result of the award of the successor Contract.

(d) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this Section, if a Contract conflicts with an existing collective bargaining agreement to which a Contractor or Subcontractor is a party, the collective bargaining agreement shall prevail. However, the Contractor or Subcontractor will be obligated to make good faith efforts to comply with the requirements of its Contract that do not conflict with the collective bargaining agreement.

(e) Preemption. Nothing in this Section shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

(f) **No Cause of Action Against City.** This Section is not intended to create a private right of action against the City.

(g) **Prospective Application.** This Section is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Contract entered into by the City. This Section shall only apply to Contracts entered into on or after the effective date of this Section.

(h) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable. (Added by Ord. 299-06, File No. 061468, App. 12/12/2006; Ord. 5-07, File No. 061584, App. 1/19/2007)

SEC. 21.25-x. PREVAILING RATE OF WAGES REQUIRED IN CONTRACTS FOR MOVING SERVICES; NONPROFIT ORGANIZATIONS EXCLUSION.

Every Contract issued by the City and County of San Francisco for Moving Services to be performed at any facility owned or leased by the City and County of San Francisco, where such work is to be done directly under the contract awarded (a "prime contract") must require that any individual performing Moving Services thereunder be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Contract is being performed.

(a) **Exclusions.** This Section shall not apply to the following:

(1) **Non-profits.** This Section shall not apply to a Contract where the Moving Services are to be performed by a non-profit organization that provides job training and work experience for disadvantaged individuals in need of such training.

(2) **Prior Agreements.** This Section shall not apply to agreements entered into before the effective date of this Section.

(3) **Contracts for \$1000 or less.** This Section shall not apply to contracts for \$1000 or less per moving service provider. Contracts may not be split for purposes of evading the requirements of this Section.

(b) **Definitions.** For purposes of this Section, the following definitions shall apply to the terms used herein:

(1) "Contract" shall mean an agreement for Moving Services to be performed at the expense of the City and County of San Francisco or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the City and County of San Francisco.

(2) "Contracting Officer" shall mean any officer or employee of the City and County of San Francisco authorized to enter into a Contract on behalf of the City and County of San Francisco.

(3) "Contractor" shall mean any Person who submits a bid and/or enters into a Contract with the City and County of San Francisco.

(4) "Employee" shall mean any individual performing moving services as defined herein. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would be so defined under the Fair Labor Standards Act.

(5) "Moving Services" shall mean moving or handling of goods being relocated under a contract for commercial moving services to relocate City offices, facilities and institutions.

(6) "Non-profit" shall mean a non-profit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains a valid non-profit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

(6) "Person" shall include any individual, firm, proprietorship, partnership, corporation or combination thereof.

(7) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers performing moving services, if a majority of such workers be paid at a single rate; if there be no single rate being paid to a majority then the prevailing rate shall be that single rate being paid the greatest number of workers.

(c) **Determination of Prevailing Rate of Wage.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for Moving Services, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, on or before the first Monday in November of each year, data as to the Prevailing Rate of Wages for Moving Services as paid in private employment in the City and County of San Francisco, including wages for overtime and holiday work. The Board of Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for Moving Services, including such rate of wages for overtime and holiday work, as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages paid in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board of Supervi-

sors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(d) **Noncompliance with Wage Provisions; Termination; Penalty.** Where the Contracting Officer of the City's Labor Standards Enforcement Officer determines that a Contractor for Moving Services may have violated the prevailing wage requirements of this Section, the Contracting Officer or the City's Labor Standards Enforcement Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the contract, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to individuals performing Moving Services under a Contract for Moving Services, the Contractor shall have "cured the violation" once the Contractor reimburses such individuals by paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section. In addition to, or instead of terminating the Contract for Moving Services, where the Contracting Officer or the Office of Labor Standards Enforcement finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer or the City's Labor Standards Enforcement Officer shall assess a penalty (a "willful violation penalty") in the sum of \$50 per day for each Employee for each day the Contractor or Subcontractor fails to pay the Prevailing Rate of Wages, such sums to be deposited in the fund out of which Contract is awarded. The Contracting Officer or the City's Labor Standards Enforcement Officer shall impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(e) **Verification.** The Contractor must provide verification of compliance with the provisions of this Ordinance upon request by the Contracting officer or the City's Labor Standards Enforcement Officer.

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(f) **Collective Bargaining Agreements.** Notwithstanding anything to the contrary in this Section, if a Contract conflicts with an existing collective bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to make good faith efforts to comply with the requirements of its Contract that do not conflict with the collective bargaining agreement.

(g) **Preemption.** Nothing in this Section shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

(h) **Effective Date and Application.** This Section shall become effective 30 days after it is enacted. This Section is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing agreement to which the City is a party, unless such pre-existing agreement has been amended after the effective date of this Section.

(i) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable. (Added by Ord. 169-04, File No. 040540, App. 7/22/2004)

SEC. 21.26. CONTRACT TERMS— IN-HOME SUPPORTIVE SERVICE REQUIREMENTS.

In the case of any contract for homemaker and chore Services to be awarded pursuant to California Welfare and Institutions Code Sections 12300 et seq., the Purchaser, on the recommendation of the department head concerned and the approval of the board or commission in charge of such department, upon the ground that the public interest would be best served by requiring the inclusion of such provisions in the contract, shall require that each Offeror, as part of its Offer, submit a certified semi-annual audit, and further shall require each offeror to give

preference to those homemakers employed under the previous contract to ensure continuity of wages, fringe benefits and seniority rights. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.27. CONTRACT TERMS— QUANTITIES.

(a) **Quantities.** Contracts may be made for definite or indefinite quantities of Commodities or Services.

(b) **Record Keeping.** Any requirements contract shall include a mechanism for maintaining records of all City orders made pursuant to the contract, including inventories of any Commodity subject to a maintenance service agreement. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.28. CONTRACT TERMS— UPGRADED PRODUCTS.

Whenever a contract for the acquisition of Commodities specifies a particular product, the contract shall allow acquisition of any upgraded comparable equivalent product at an equal or lesser price in lieu of the specified product. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.29. CONTRACT TERMS— PRICING.

(a) Pricing specifications during the term of a contract for Commodities may require fixed pricing, unspecified pricing, or may combine fixed prices for some Commodities and unspecified pricing for others, as is determined to be in the best interests of the City by the Contracting Officer.

(b) If fixed prices are required by the Solicitation, such fixed prices shall represent the maximum price that the contractor may charge for the Commodities specified in the contract, and the Solicitation shall specify that the contractor must provide for price reductions as a Commodity becomes less expensive and the contractor's costs for that Commodity are reduced.

(c) Contracting Officers are encouraged to include price warranties or "most-favored customer" clauses in contracts, as appropriate, to give the City consistent access to the contractor's lowest prices. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.30. SOFTWARE LICENSES, SUPPORT, ESCROW, FINANCE, AND EQUIPMENT MAINTENANCE AGREEMENTS.

(a) The Board of Supervisors hereby approves the execution of perpetual, nonexclusive software licensing agreements which warrant performance of the software according to specifications and which are for an amount of less than ten million dollars, including any associated escrow agreement for source code or finance agreement, without further Board approval.

(b) Software licensing procurements are not subject to the contracting requirements of the Administrative or Environment Code, but shall be subject to the requirements established by Section 21.03(j) and Chapter 67. For the purpose of this section, software licensing procurements shall be deemed to include both the licensed software product, any escrow agreement for source code, finance agreements, and support services for such product where support for that product is available only from the licensor.

(c) Agreements for the development of software shall include acceptance testing of the software and/or performance criteria, and shall condition payments on successful completion of the acceptance test or satisfaction of the performance criteria specified in the contract.

(d) Where a vendor has proprietary rights to software or where maintenance of equipment by a particular vendor is required to preserve a warranty, software support and equipment maintenance agreements entered into with that vendor shall be treated as a sole source for the purposes of any contract requirements included in the Municipal Code.

(e) A Contracting Officer is authorized to make payment for software license fees and software support, equipment maintenance and

associated escrow and finance fees in advance of receiving services under a contract. (Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. 115-05, File No. 050595, App. 6/17/2005)

SEC. 21.31. ARTICLES NOT TO BE PRISON MADE; EXCEPTION.

No Commodity furnished under any contract made under the provisions of this chapter shall have been made in a prison or by convict labor, except for Commodities made in a prison or by convicts under the supervision and control of the California Department of Corrections and limited to Commodities for use by the City's detention facilities. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.32. FOOD PURCHASED BY THE SEALER OF WEIGHTS AND MEASURES.

Food purchased by the Sealer of Weights and Measures in the course of official duties shall be delivered for use at public institutions of the City and County of San Francisco, or at non-profit organizations, in accordance with procedures established by the Director of Administrative Services. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

Cross reference:

Duties of the Sealer of Weights and Measures assumed by the Director of the Department of Consumer Assurance, Regulatory Compliance and Agricultural Standards, see Administrative Code Section 16.3-7.5.

SEC. 21.33. PROCEDURE UPON CONTRACTOR'S FAILURE TO DELIVER.

When a contractor fails to deliver a Commodity or Service of the quality, in the quantity, or in the manner specified in the contract within the time specified in the contract, the Contracting Officer may terminate the contract and/or purchase such Commodity or Service from any source; and if a greater price than that named in the contract be paid for such Commodity or Service, the excess price will be charged to and collected from the Contractor or the sureties on the Contractor's bond(s). All items supplied shall be subject to inspection or rejection by the Pur-

chaser, by the County Agricultural Commissioner-Sealer of Weights and Measures upon the Purchaser's request, or by the department receiving the Commodity or Service. The Purchaser's authority to procure Commodities or services from other sources as herein specified shall not preclude the City's exercise of any other remedies, including termination of the contract. (Added by Ord. 156-99, File No. 990743, App. 6/2/99; amended by Ord. 187-04, File No. 040759, App. 7/22/2004)

SEC. 21.34. AUDIT OF CONTRACTOR'S RECORDS.

The City may, at reasonable places and times, audit the books and records of a City contractor under any contract to the extent that such books and records relate to the performance of such contract. Such books and records shall be maintained by the contractor for three years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.35. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES.

(a) The covenant of good faith and fair dealing is contained in every City Commodities or Services contract, and Contractors and subcontractors shall at all times deal in good faith with the City and shall submit claims, requests for equitable adjustments, requests for change orders, requests for contract modifications or requests of any kind seeking increased compensation on a City contract only upon a good-faith, honest evaluation of the underlying circumstances and a good-faith, honest calculation of the amount sought. Any contractor, subcontractor, or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought

to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(3) Conspires to defraud the City by getting a false claim allowed or paid by the City;

(4) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;

(5) Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

(b) This Section does not apply to any controversy involving an amount of less than \$500 in value. For purposes of this Section, "controversy" means any one or more false claims submitted by the same contractor, subcontractor, or consultant in violation of this Section.

(c) Every contract for Commodities or services performed at the expense of the City or the cost of which is paid for out of monies deposited in the treasury of City, whether directly awarded or indirectly by or under subcontract, subpartnership, day labor, station work, piece work, or any other arrangement whatsoever, shall contain a clause informing the contractor of the requirements of Subdivision (a).

(d) Liability under this section shall be joint and several for any act committed by two or more persons.

(e) For purposes of this Section, the terms "contractor" and "subcontractor" shall have the same definitions as found in Section 12-D.A.5 of the San Francisco Administrative Code. The term "consultant" shall be broadly defined to include any person or entity that provides services to the City.

(f) For purposes of this Section, "claim" includes any request or demand for money, property, or services made to any employee, officer, or agent of the City, or to any contractor, subcontractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by the City.

(g) For purposes of this Section, "knowingly" means that a contractor, subcontractor, or consultant, with respect to information, does any of the following:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information;
- (3) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent is not required and reliance on the claim by the City is also not required. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.36. CONTRACT DISPUTE RESOLUTION.

With respect to any dispute which arises under or by virtue of a contract between the City and a contractor, including disputes based on breach of contract, mistake, misrepresentation, or other cause for contract modification or revision, the Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the contractor's claims. Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. A copy of the Contracting Officer's decision shall be mailed or otherwise promptly delivered to the Contractor. The Contracting Officer's decision shall be final unless appealed to a court of competent jurisdiction by the Contractor. If the Contracting Officer does not issue a written decision within 120 days after written request for a final decision, or within such longer period as may be agreed upon by the

parties, then the contractor may proceed as if an adverse decision had been received. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.37. DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS.

When charges are brought for violation of Sections 21.35 or 21.38 of this Chapter, the Contractor or subcontractor shall be given notice of the charges and of all evidence supporting such charges. The Contractor or subcontractor or its attorney shall be entitled to offer rebuttal evidence and any other evidence in support of its position. The Purchaser and the Controller shall conduct a hearing, where the charges and all evidence shall be presented. In the alternative, the Purchaser and the Controller may appoint a hearing officer to conduct such a hearing and make written findings of fact to be submitted to them to render the final decision. Violation of Sections 21.35 or 21.38 by a Contractor may serve as the basis for finding that Contractor or subcontractor irresponsible and subject to the penalties listed in those sections. Following any decision finding a Contractor or subcontractor irresponsible, the Purchaser and the Controller shall retain authority to modify the decision. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.38. EFFECT OF DISQUALIFICATION OF IRRESPONSIBLE CONTRACTORS.

Any Contractor who fails to comply with the terms of its contract with the City may be declared an irresponsible Contractor through the procedures listed in Section 21.37. Upon such determination, the Contractor shall not be permitted to act as a Contractor or subcontractor on any City contract for a period of up to five years as determined by the Purchaser and the Controller. The contract of any such person may, at the option of the Purchaser and the Controller, be canceled and in the event of such cancellation, no recovery shall be had thereon by the contractor. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.39. COLLUSION IN CONTRACTING.

If any party or parties to whom a contract has been awarded participates in collusion with any representative of the City or any other party or parties in the submission of any Offer or for the purpose of preventing an offer from being made, or in knowingly receiving preferential treatment by any officer or employee of the City, then any contract so awarded, if not completed, may be declared null and void by the Board of Supervisors on the recommendation of the Contracting Officer, and the Contracting Officer shall thereupon reissue a Solicitation for the uncompleted portion of such contract. If the work under such contract shall have been completed, the matter shall be referred to the City Attorney for such action as may be necessary. Any party or parties determined to have participated in such collusion shall be deemed an irresponsible Contractor. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.40. CONSTRUCTION AGAINST IMPLICIT REPEALER.

No part of this Chapter shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.41. SEVERABILITY.

If any provisions of this Chapter or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable. (Added by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 21.42. PROFESSIONAL SERVICES CONTRACTS FOR HEALTH AND BEHAVIORAL HEALTH SERVICES AND SUPPORT.

(a) The Board of Supervisors hereby authorizes the San Francisco Health Commission to designate as sole source, professional services

contracts for health and behavioral health services and support, where such services are provided by non-profit organizations and a sole source designation is recommended by the San Francisco Department of Public Health.

(b) Prior to the expiration of an existing contract, the Director of the Department of Public Health will survey the availability of providers for the health and behavioral health services and support services required by the Department of Public Health where such services are 1) unique to the Department of Public Health, (2) consistent with the its mission and goals, and (3) require specialized knowledge, training, personnel, facilities or other resources that are known to be provided by a limited number of non-profit contractors. Based upon the results of such surveys, the Director of the Department of Public Health may recommend a sole source designation to the San Francisco Health Commission for those services.

(c) Nothing herein limits the ability of the Department of Public Health to engage in a competitive process for services provided by non-profit providers. (Added by Ord. 309-06, File No. 061569, App. 12/18/2006)

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CHAPTER 21A: [RESERVED]

Sec. 21A.1.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.2.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; amended by Ord. 210-02, File No. 020784, App. 10/25/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.3.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.4.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.5.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.6.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.7.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.8.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.9.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.10.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.11.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; amended by Ord. 210-02, File No. 020784, App. 10/25/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.12.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.13.

(Added by Ord. 210-02, File No. 020784, App. 10/25/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003) (Former Sec. 21A.13 renumbered as Sec. 21A.14 by Ord. 210-02)

Sec. 21A.14.

(Added by Ord. 83-00, File No. 00392, App. 5/12/2000; amended by Ord. 210-02, File No. 010784, App. 10/25/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21A.15.

(Added by Ord. 83-00, File No. 000392, App. 5/12/2000; amended by Ord. 210-02, File No. 020784, App. 10/25/2002; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

San Francisco - Administrative Code

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CHAPTER 21B: [RESERVED]

San Francisco - Administrative Code

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**CHAPTER 21C: PRICE ADJUSTMENTS IN THE AWARD OF
CITY PROCUREMENT CONTRACTS TO REFLECT
DIRECT SALES TAX AND BUSINESS TAX REVENUES FOR THE CITY,
THE SAN FRANCISCO UNIFIED SCHOOL DISTRICT,
THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, AND
THE SAN FRANCISCO TRANSPORTATION AUTHORITY**

- Sec. 21C.1. Definitions.
Sec. 21C.2. Powers and Duties of
Authorities Awarding Contracts.
Sec. 21C.3. City Undertaking Limited to
Promotion of General Welfare.
Sec. 21C.4. Severability.

SEC. 21C.1. DEFINITIONS.

(a) "City" means the City and County of San Francisco.

(b) "Contract" means an agreement for the purchase of commodities, including an agreement for services which includes the purchase of commodities, at the expense of the City, with an estimated value of commodities in excess of \$1,000, where any part of the transaction would be subject to sales tax. "Contract" shall not include purchases paid for with City Retirement or Health Services System trust funds.

(c) "Offer" means a bid or proposal submitted to the City in response to a solicitation.

(d) "Offeror" means a person or entity that submits an offer to the City to provide commodities or services.

(e) "Solicitation" means a written invitation for bids, request for quotations or request for proposals issued by the City for the purpose of soliciting bids, quotations or proposals to sell to the City commodities, alone or in conjunction with services, where the proposed purchase of commodities would be subject to sales tax. (Added by Ord. 322-98, App. 10/30/98)

**SEC. 21C.2. POWERS AND DUTIES OF
AUTHORITIES AWARDED CONTRACTS.**

(a) In determining the lowest responsible bidder or otherwise taking into account the price contained in an offer subject to this Chapter, the

contract awarding authority shall reduce the price contained in the offer according to the following criteria. The price contained in an offer shall be reduced in an amount equal to the sum of (1) the direct sales tax revenue, if any, that would be generated by the sale to the City that will be allocated to the City and County of San Francisco, the San Francisco Unified School District, the San Francisco Community College District, or the San Francisco Transportation Authority if that offer was accepted; and (2) the incremental gross receipts tax revenue that would be generated by the transaction if the City has jurisdiction to levy the City's Payroll Expense or Gross Receipts Tax on that offeror as a result of the offeror's business related to the commodity sold to the City and as if the offeror were required to pay the gross receipts tax.

(b) If a solicitation subject to this chapter involves the purchase of commodities of an indefinite quantity, for the purpose of making the price adjustment required by Paragraph (a) the contract awarding authority shall select a fixed quantity of the identified commodity based on the minimum amount of the commodity the contract awarding authority estimates will be purchased over the term of the contract, and shall evaluate all offers based on the same fixed quantity for the purpose of comparing prices offered.

(c) The bid adjustment required by Paragraph (a) shall be in addition to any other discounts, preferences or adjustments required by City law and shall not be made where:

(1) The adjustment would conflict with conditions contained in federal or State grants or violate preemptive federal or State law; or

(2) The City is entering into a cooperative procurement with one or more other jurisdictions. (Added by Ord. 322-98, App. 10/30/98)

**SEC. 21C.3. CITY UNDERTAKING
LIMITED TO PROMOTION OF GENERAL
WELFARE.**

In undertaking the adoption and enforcement of this Chapter, this City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 322-98, App. 10/30/98)

SEC. 21C.4. SEVERABILITY.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any City agency to impose any duties or obligations in conflict with limitations on municipal authority established by federal law at the time such agency action is taken.

If any section, paragraph, sentence, clause or phrase of this Chapter is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter. The Board of Supervisors declares that it would have passed each section, paragraph, sentence, clause or phrase of this Chapter irrespective of the fact that any portion of this Chapter could be declared unconstitutional, invalid or ineffective. (Added by Ord. 322-98, App. 10/30/98)

CHAPTER 21D: [RESERVED]

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CHAPTER 21E: [RESERVED]

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CHAPTER 21F: [RESERVED]

Sec. 21F.1.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.2.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.3.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.4.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.5.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.6.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.7.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.8.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.9.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.10.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21F.11.

(Added by Ord. 121-99, File No. 990405, App. 5/21/99; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

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CHAPTER 21G: [RESERVED]

Sec. 21G.1.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.2.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.3.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.4.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.5.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.6.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.7.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.8.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.9.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.10.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

Sec. 21G.11.

(Added by Ord. 15-03, File No. 021791, App. 2/7/2003; repealed by Ord. 171-03. File No. 030422, App. 7/3/2003)

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CHAPTER 22: RADIO COMMUNICATION FACILITIES

- Sec. 22.1. Purpose of Chapter.
- Sec. 22.2. Duties of Chief of Department of Electricity Relative to Chapter.
- Sec. 22.3. Submission of Plans of New Installations to Chief for His Recommendation.
- Sec. 22.4. Applicability of Chapter to Facilities under Jurisdiction of Public Utilities Commission.

SEC. 22.1. PURPOSE OF CHAPTER.

It is hereby declared that the purpose of this Chapter is to improve and coordinate the use of radio communications facilities owned and operated by the City and County or any department thereof in order to eliminate duplications and interferences, to bring about economies which could not otherwise be obtained, and to provide a service whereby a well-planned program of radio communication may be provided to City and County departments and maintained in the most economical manner. (Ord. No. 8485(1939), Sec. 1)

SEC. 22.2. DUTIES OF CHIEF OF DEPARTMENT OF ELECTRICITY RELATIVE TO CHAPTER.

As a means of carrying out the policy defined in the preceding Section, the Chief of the Department of Electricity shall have the responsibility of performing and the authority to perform the following duties:

- (a) He or she shall have charge of the installation, repair, maintenance and inspection of all radio communication equipment owned and operated by the City and County or any department or agency thereof.
- (b) He or she shall make recommendations for proposed radio systems and installations at the request of the Board of Supervisors or any City and County department.

(c) He or she shall function as technical advisor to all departments to the end that the operation and use of existing or proposed radio facilities operated by the various departments of the City and County shall be coordinated.

(d) He or she shall make certain that all City and County radio equipment is installed, maintained and operated in compliance with State and federal laws, rules and regulations pertaining thereto.

(e) He or she shall make such rules and regulations affecting operational procedure and conduct as are necessary to bring about conformity with Federal Communications Commission requirements and such rules and regulations shall be complied with by all departments.

(f) He or she shall provide adequate representation before the Federal Communications Commission in matters affecting the use of radio by the City and County or any City and County department. He or she shall be responsible for obtaining proper construction permits and licenses issued by the Federal Communications Commission and is hereby authorized to sign applications on behalf of the City and County for such permits and licenses.

(g) He or she shall advise and consult with the State Communications Advisory Board, making available to the various City and County departments the services rendered by such board.

(h) Upon the request of the Director of Telecommunications and Information Services or the Mayor, Board of Supervisors or Controller, through the Director of Telecommunications and Information Services, he or she shall investigate proposed expenditures for radio communication facilities and report his or her findings and recommendations.

(i) Upon request of the Purchaser, he or she shall assist and advise the Purchaser of Supplies in his or her endeavors to standardize materials,

supplies and equipment to be used for radio communications. (Ord. No. 8485(1939), Sec. 2; amended by Ord. 287-96, App. 7/12/96)

SEC. 22.3. SUBMISSION OF PLANS OF NEW INSTALLATIONS TO CHIEF FOR HIS RECOMMENDATION.

All plans and specifications for the construction of new installations for radio communications of any department or agency of the City and County shall be submitted by the Board of Supervisors to the Chief of the Department of Electricity for his or her recommendations thereon. (Ord. No. 8485(1939), Sec. 3)

SEC. 22.4. APPLICABILITY OF CHAPTER TO FACILITIES UNDER JURISDICTION OF PUBLIC UTILITIES COMMISSION.

The provisions of this Chapter shall not apply to radio communication facilities of any municipally owned utility under the jurisdiction of the Public Utilities Commission; however, upon request of the Public Utilities Commission, through the Director of Telecommunications and Information Services, the Chief of the Department of Electricity is authorized to cooperate with and to render any or all services provided in Section 22.2 of this Code to any utility owned and operated by the City and County. (Ord. No. 8485(1939), Sec. 4; amended Ord. 287-96, App. 7/12/96)

CHAPTER 22A: [RESERVED]

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CHAPTER 22B: TELECOMMUNICATIONS FACILITIES

- Sec. 22B.1. Purpose of Chapter.
- Sec. 22B.2. Duties of General Manager of Department of Electricity Relative to Chapter.
- Sec. 22B.3. Implementation Report.

SEC. 22B.1. PURPOSE OF CHAPTER.

(a) It is hereby declared that the purpose of this Chapter is to improve and coordinate the use and procurement of equipment, facilities, and services owned and operated, or subscribed to by the City and County or any department thereof: (1) for voice communication systems; (2) for the transmission, communication, and transport links up to the demarcation point between and among systems for voice, messaging, data information, alarm, public safety, wireless, cellular, video, Mayor's Emergency Telephone System; and (3) for support activities as required for these systems such as billing services and financial analysis, hereinafter referred to collectively as "telecommunications," in order to eliminate duplications and inefficiencies, to bring about economies which could not otherwise be obtained, and to provide a service whereby a well-planned program of telecommunications may be provided to City and County departments, boards, and commissions and maintained in the most economical manner.

(b) Telecommunications, as defined in this Section, does not include equipment, facilities and services that relate directly to data processing equipment or services which are directly managed by various departmental divisions for Management Information System (MIS), including but not limited to, the Controller's Information Services Division (ISD), Airport's MIS Division, Public Utilities Commission's Bureau of MIS and Department of Public Health MIS. (Added by Ord. 293-92, App. 9/17/92)

SEC. 22B.2. DUTIES OF GENERAL MANAGER OF DEPARTMENT OF ELECTRICITY RELATIVE TO CHAPTER.

As a means of carrying out the policy defined in the preceding section, the General Manager of the Department of Electricity, hereinafter referred to as "General Manager," shall have the responsibility and authority to perform the following duties:

(a) General Manager shall have charge of the planning, design, coordination, installation, repair, maintenance, inspection of all telecommunications equipment, facilities and services owned, operated, or subscribed to, by the City and County or any department, board, commission, or agency thereof, pursuant to the budgetary provisions of the Charter. The General Manager will obtain concurrence of the appropriate MIS department when data facilities or services are involved;

(b) General Manager shall make recommendations for proposed telecommunications systems and services to the Electronic Information Processing Steering Committee (EIPSC) to meet its stated functional requirements for any City and County department, board or commission;

(c) General Manager shall function as technical advisor to all departments to the end that the operation and use of existing or proposed telecommunications equipment, facilities, and services used by the various departments, boards, and commissions of the City and County shall be coordinated;

(d) General Manager shall make certain that all City and County telecommunications equipment, facilities, and services are installed, maintained and operated in compliance with State, federal and local laws, rules and regulations pertaining thereto;

(e) General Manager shall prescribe and promulgate such rules and regulations affecting telecommunications technical standards and operational procedures and conduct reasonably nec-

essary to bring about conformity with Department of Electricity and EIPSC requirements for telecommunications and such rules and regulations shall be complied with by all departments, boards and commissions;

(f) General Manager shall provide adequate representation for the City and County of San Francisco before any regulatory body having jurisdiction over matters affecting the use of telecommunications by any City and County department, board, and commission. General Manager may delegate this responsibility, with the approval of the Director of Telecommunications and Information Services;

(g) General Manager shall advise and consult with the State Communications Advisory Board, making available to the various City and County departments, boards and commissions the services rendered by such board;

(h) Upon request of the Purchaser of Supplies, General Manager shall assist and advise the Purchaser with respect to the Purchaser's endeavors to standardize materials, supplies, facilities, services and equipment to be used for telecommunications;

(i) The General Manager of Department of Electricity with the consent of any City and County department, board, or commission may delegate any of the above responsibilities at his/her discretion, except as provided in Paragraph (f) of this Section. (Added by Ord. 293-92, App. 9/17/92; amended by Ord. 287-96, App. 7/12/96)

SEC. 22B.3. IMPLEMENTATION REPORT.

The General Manager of the Department of Telecommunications shall provide the Board of Supervisors with a detailed action plan for implementing the telecommunications program. (Added by Ord. 293-92, App. 9/17/92)

CHAPTER 22C: PUBLIC INTERNET ACCESS

- Sec. 22C.1. Findings and Purpose of Chapter.
- Sec. 22C.2. Definitions.
- Sec. 22C.3. Prohibition on Use of Filtering Software.
- Sec. 22C.4. Appropriation Requests Based on Loss of State or Federal Funding.

SEC. 22C.1. FINDINGS AND PURPOSE OF CHAPTER.

Existing Internet filters and content blocking technology ("filtering software") regularly block access to useful and constitutionally protected information. Accordingly, the purpose of this Chapter is to ensure that where the City and County of San Francisco ("City"), or any department thereof, offers public Internet access through City-owned computers ("public Internet access terminals"), such terminals shall provide members of the public with uncensored access to information available on the Internet. (Added by Ord. 206-01, File No. 010940, App. 10/19/2001)

SEC. 22C.2. DEFINITIONS.

(a) For purposes of this Chapter, "filtering software" shall mean any technology designed to block access to information, websites and other materials on the Internet based on the words, images or other content contained therein.

(b) For purposes of this Chapter, "public Internet access terminals" shall mean any City-owned computers or other City-owned equipment designated by the City to provide Internet access to members of the public. "Public Internet access terminals" shall not include public Internet terminals designated by the City to be used exclusively or primarily by individuals under the age of 13. (Added by Ord. 206-01, File No. 010940, App. 10/19/2001)

SEC. 22C.3. PROHIBITION ON USE OF FILTERING SOFTWARE.

Where the City, or any department thereof, offers public Internet access through public In-

ternet access terminals, the City shall not use or install Internet filtering software on such public Internet access terminals. (Added by Ord. 206-01, File No. 010940, App. 10/19/2001)

SEC. 22C.4. APPROPRIATION REQUESTS BASED ON LOSS OF STATE OR FEDERAL FUNDING.

Where a City department provides public Internet access terminals and loses, or is at substantial risk of losing, Federal or State government funding or subsidies ("Funding") as a result of compliance with the prohibition on use of filtering software under this Chapter, the department head, or his or her designee, shall notify the Board of Supervisors and the Controller, in writing, of the department's estimated loss of Funding within 90 days of discovery of this potential or actual loss of Funding for the applicable fiscal year. In such notice, the department head, or his or her designee, shall also indicate the extent to which such loss of revenue may cause a negative impact on the quality, quantity or availability of the department's services or operations. Where a department establishes that such loss of Funding will cause the department to substantially reduce the quality, quantity or availability of its services or operations, the Board of Supervisors and the Mayor shall treat such information as a significant factor in favor of granting the department a funding appropriation in an amount equal to the estimated loss of Funding during the applicable fiscal year. (Added by Ord. 206-01, File No. 010940, App. 10/19/2001)

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CHAPTER 23: REAL PROPERTY TRANSACTIONS

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ARTICLE I: IN GENERAL

- Sec. 23.1. Director of Property to Conduct Sales, Leases, Acceptances, and Other Real Estate Transactions.
- Sec. 23.2. Chapter Definitions.
- Sec. 23.3. Conveyance of Real Property.
- Sec. 23.4. Acceptance of Deeds by Director of Property and Assistant.
- Sec. 23.5. Expenses of Real Estate Department in Connection with Leases, Acquisitions and Conveyances.
- Sec. 23.6. Sale or Lease of Public Utility Property.
- Sec. 23.7. Public Notice Required Prior to Board of Supervisors' Approval of a Sale, Transfer, or Other Conveyance of City-Owned Property.
- Sec. 23.8. Annual Real Property Reporting and Planning.

SEC. 23.1. DIRECTOR OF PROPERTY TO CONDUCT SALES, LEASES, ACCEPTANCES, AND OTHER REAL ESTATE TRANSACTIONS.

Generally. The Director of Property is the head of the Real Estate Department, who shall perform his or her duties in accordance with Section 2A.110 of this Code. Except as otherwise set forth in Sections 4.112, 4.113, 4.114, 4.115, and B3.581 of the Charter and by Sections 2A.173 and 23.36 of this Code, or as otherwise provided by the Charter or this Code, each department, board or commission of the City shall conduct all negotiations through the Director of Property for the Acquisition, Conveyance or Lease of any Real Property required for use or owned by the City in accordance with the provisions of this Chapter.

Applicability of Chapter. The provisions of this Chapter shall apply to all Real Property Acquired, Conveyed or Leases by of for City purposes, except as otherwise provided by the Charter or this Code.

Approval of Ordinances, Resolutions. The Director of Property must recommend for approval resolutions and ordinances involving transactions provided for in this Chapter before adoption by the Board of Supervisors.

Inapplicability of Chapter. This Chapter shall not apply to the sale of Real Property for delinquent taxes or assessments, the granting of regulatory permits or franchises to use public streets, or the awarding of contracts by the Department of Parking and Traffic for the management or operation of City-owned parking garages. (Bill No. 1787, Ord. No. 12.1761(C.S.), Secs. 1 to 4; amended by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.1-1.
(Added by Ord. 439-96, App. 11/8/96; repealed by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.2. CHAPTER DEFINITIONS.

Chapter Definitions. As used in this Chapter, the following initially capitalized terms shall have the meanings ascribed to them in this Section:

"Acquire" shall mean to acquire, accept, purchase, or exchange an easement or fee title in Real Property. **"Acquisition"** shall have a correlative meaning.

"City" shall mean the City and County of San Francisco.

"Charter" shall mean the Charter of the City and County of San Francisco.

"Code" shall mean the Administrative Code of the City and County of San Francisco.

"Competitive Bidding Process" or "Competitive Bidding Procedures" shall mean a request for proposals, request for qualifications, or other publicly noticed competitive solicitation with specified criteria for selection.

"Convey" shall mean to convey, sell, transfer, grant, or relinquish an easement or fee title in Real Property. **"Conveyance"** shall have a correlative meaning.

"Lease" shall mean a lease, sublease, or other means of granting a right to occupy or use Real Property, and shall also include a license, permit to enter, use permit or other similar instrument.

"Real Estate Department" shall mean the Real Estate Division of the Department of Administrative Services.

"Real Property" shall mean any interest in land or improvements, including an easement, Lease, or fee interest. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.2 was repealed by Ord. 15-01.)

SEC. 23.3. CONVEYANCE OF REAL PROPERTY.

The Director of Property may Convey any Real Property owned by the City upon recommendation of the department responsible for the administration of such Real Property, excepting park lands pursuant to Charter Section 4.113(2) or where a Conveyance of such Real Property would violate the terms of any gift, trust, deed restriction, bond covenant, or other covenant or restriction under which the City holds the Real Property. Such Conveyance may be made after the Board of Supervisors, by resolution, determines that the public interest or necessity demands, or will not be inconvenienced by such Conveyance, and approves the Conveyance. If the Conveyance is a Competitive Bidding Process or a public auction, the Board shall approve and confirm by resolution any such Conveyance after such Competitive Bidding Process or auction process is complete. The Board's resolution authorizing a Conveyance shall set forth the means of Conveyance, whether by public auction, Competitive Bidding Process or such other means of disposition as the Board may authorize by resolution. The Board of Supervisors may authorize such Conveyance by resolution without advertisement, public auction, or Competitive Bidding Process if it determines that an

auction or Competitive Bidding Process is impractical or impossible, including, for example only and not by way of limitation, when the Real Property is not capable of independent development, will be exchanged for other Real Property, or when the Board determines that a negotiated direct Conveyance of the Real Property will further a proper public purpose.

Before the Board of Supervisors approves a Conveyance, the Director of Property shall appraise the fair market value of such Real Property and give the notices required by California Government Code Section 54220 et seq. or any other applicable provision of state law. The Director of Property shall also advertise by publication the proposed Conveyance if the Conveyance will be by public auction or Competitive Bidding Process, for an appropriate period as determined by the Director of Property. Every Conveyance other than a sale at public auction or through a Competitive Bidding Process shall be for a sales price of at least 100 percent of the Director of Property's appraisal of such Real Property, except where the Board determines either that (i) a lesser sum will further a proper public purpose, or (ii) based on substantial evidence in the record, the terms and conditions of such Conveyance are reflective of the fair market value of the Real Property notwithstanding the appraisal. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001; amended by Ord. 179-03, File No. 030582, App. 7/18/2003. Former Sec. 23.3 was repealed by Ord. 15-01.)

SEC. 23.4. ACCEPTANCE OF DEEDS BY DIRECTOR OF PROPERTY AND ASSISTANT.

The Director of Property and the Assistant Director of Property of the City are hereby each authorized to accept and consent to deeds or other instruments granting Real Property to the City that are approved by the Board of Supervisors and to sign the required certificate of acceptance relating thereto. The Director of Property shall record a certified copy of the resolution from which this Section was derived in each

county wherein any Real Property is owned by or is to be Acquired by the City. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.4 was repealed by Ord. 15-01.)

SEC. 23.5. EXPENSES OF REAL ESTATE DEPARTMENT IN CONNECTION WITH LEASES, ACQUISITIONS AND CONVEYANCES.

The Real Estate Department shall be entitled to payment of reasonable expenses in connection with negotiating Leases, Conveyances, Acquisitions, managing City owned Real Property, consulting with departments, and incidental work performed under the provisions of this Chapter. The department concerned shall pay the Real Estate Department for such expenses by interdepartmental work order or other means. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.5 was repealed by Ord. 15-01.)

SEC. 23.6. SALE OR LEASE OF PUBLIC UTILITY PROPERTY.

The Board of Supervisors shall have power to Lease or Convey any public utility or any part thereof; provided that any resolution or other measure involving the Lease or Conveyance of any public utility or part thereof, excepting those Leases or Conveyances provided for in Sections 23.3 and 23.6 of this Code, or any ordinance granting any new franchise for the operation of any public utility whose franchise has expired, or is about to expire, must be referred and submitted to a vote of the electors of the City at the election next ensuing not less than 60 days after the adoption of such ordinance, and shall not go into effect until ratified by a majority of the voters voting thereon. (Formerly Sec. 23.6-3; added by Ord. 439-96, App. 11/8/96; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.6 was repealed by Ord. 15-01.)

Sec. 23.6-1.

(Amended by Ord. 157-85, App. 3/28/85; Ord. 304-96, App. 7/25/96; repealed by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.6-2.

(Added by Ord. 157-85, App. 3/28/85; amended by Ord. 304-96, App. 7/25/96; repealed by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.6-3.

(Added by Ord. 439-96, App. 11/8/96; amended and renumbered as Sec. 23.6 by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.7. PUBLIC NOTICE REQUIRED PRIOR TO BOARD OF SUPERVISORS' APPROVAL OF A SALE, TRANSFER, OR OTHER CONVEYANCE OF CITY-OWNED PROPERTY.

Not less than 10 days prior to action by the Board of Supervisors approving a sale, transfer, or other conveyance of fee title to City-owned property, including but not limited to approval of a conveyance as part of the settlement of litigation, the Clerk of the Board shall work with City departments to make certain that the department having jurisdiction of the City-owned property shall cause notice of the proposed action to be given as follows:

(a) Notice shall be posted on the site of the property to be conveyed ("the Transfer Site") in accordance with the requirements established by the Zoning Administrator under Planning Code Sections 311 and 312.

(b) Written notice describing the proposed action shall be mailed to all owners and, to the extent practicable, occupants of properties within 150 feet of the Transfer Site in the same Assessor's Block and on the block face across from the Transfer Site. When the Transfer Site is a corner lot, the notification area shall further include all property on both block faces across from the Transfer Site, and the corner property diagonally across the street. The latest City-wide Assessor's roll for names and addresses of owners shall be used for such notice.

(c) Written notice describing the proposed action shall also be mailed to persons or organizations that have indicated an interest in the Transfer Site or its area by including their names on a list maintained by the Planning Department.

This notice requirement shall not apply to a transfer of jurisdiction between one City agency or department and another City agency or department.

Failure to comply with these notice requirements shall not invalidate conveyance of such property. (Added by Ord. 25-04, File No. 031989, App. 2/19/2004)

SEC. 23.8. ANNUAL REAL PROPERTY REPORTING AND PLANNING.

(a) All City departments shall report to the Director of Property annually, no later than ninety (90) days before the end of each fiscal year, the physical condition, current utilization and department contact information for real property and facilities under the jurisdiction of such department on a form to be provided by the Director of Property. Such information shall be summarized and maintained by the Director of Property in an Annual Real Property and Facility Report, and relevant portions of such information shall be included in the Real Estate Information System (REIS) located on the Real Estate Division's intranet website. The Annual Real Property and Facility Report shall include a limited Real Estate Asset Management Plan for the upcoming fiscal year with the Director of Property's recommendations regarding specified City real property assets, including facility maintenance and management, capital repairs, and potential acquisitions or dispositions (subject to the Surplus Property Ordinance and other City requirements), with the intent of increasing the City's efficient utilization of its real property assets.

(b) Each City department with jurisdiction over real property shall assign a real property and facilities staff person to work with the Real Estate Division in the timely reporting of information as required by this section. This staff person shall, following the Director of Property's approval, cause the appropriate data to be entered in the Real Estate Division's REIS.

(c) The Director of Property shall present the Annual Real Property and Facility Report, including the Asset Management Plan, to the

Board of Supervisors. Upon the Board of Supervisors' approval of the Asset Management Plan, the Director of Property shall, consistent with his or her authority and working with applicable City departments, implement the recommendations in the Asset Management Plan subject to any required City approvals following environmental review.

(d) Each fiscal year the Director of Property shall include in his or her proposed budget sufficient funds to maintain the REIS, and to perform the tasks contemplated by the Asset Management Plan. (Added by Ord. 59-05, File No. 050061, App. 4/1/2005)

ARTICLE II: INTERDEPARTMENTAL TRANSFER OF REAL PROPERTY

- Sec. 23.10. "Department" Construed.
- Sec. 23.11. Powers Granted Departments by Charter or Code Not Abridged.
- Sec. 23.12. Transfer Authorized; Grounds for Transfer.
- Sec. 23.13. Filing Request for Transfer.
- Sec. 23.14. Director of Property's Report.
- Sec. 23.15. Mayor's Consent to Transfer; Consent of Department Having Jurisdiction.
- Sec. 23.16. Resolution Authorizing Transfer.
- Sec. 23.17. Transfer Not to Violate Trust.
- Sec. 23.18. Making Transfer Without Mayor's or Department's Consent.
- Sec. 23.19. Record of Transfer.
- Sec. 23.20. Payment.

Sec. 23.7.
(Ord. No. 7919 (1939), Sec. 9; amended and renumbered as Sec. 23.10 by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.8.
(Ord. No. 7919 (1939), Sec. 10; amended and renumbered as 23.11 by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.9.
(Ord. No. 7919 (1939), Sec. 1; amended and renumbered as 23.12 by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.10. "DEPARTMENT" CONSTRUED.

For purposes of this Article, the word "department" shall include the Board of Trustees of the San Francisco Unified School District when Real Property of the City used, acquired or designated

for school purposes from City funds is concerned. (Formerly Sec. 23.7; added by Ord. No. 7919 (1939), Sec. 9; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.10 was renumbered as Sec. 23.13 by Ord. 15-01)

SEC. 23.11. POWERS GRANTED DEPARTMENTS BY CHARTER OR CODE NOT ABRIDGED.

The provisions of this Article shall not be construed to abridge, modify or alter the powers granted to any department or commission by any other provisions of the Charter or this Code. (Formerly Sec. 23.8; added by Ord. No. 7919 (1939), Sec. 10; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.11 was renumbered as 23.14 by Ord. 15-01.)

SEC. 23.12. TRANSFER AUTHORIZED; GROUNDS FOR TRANSFER.

Whenever any Real Property belonging to the City is no longer used advantageously by the department under whose jurisdiction it is, or when any such Real Property can be more advantageously used by a department other than the department under whose jurisdiction it is, the Real Property may be transferred to the jurisdiction of the department which can more advantageously use the same in accordance with the provisions of this Article. (Formerly Sec. 23.9; added by Ord. No. 7919 (1939), Sec. 1; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.12 was renumbered as 23.15 by Ord. 15-01.)

SEC. 23.13. FILING REQUEST FOR TRANSFER.

The officer, board or commission in charge of the department which desires to have Real Property transferred to it shall file with the Mayor and the Director of Property a request in writing

for the transfer, which request shall contain a description of the desired Real Property and state the specific purposes for which the Real Property is to be used by the requesting department. (Formerly Sec. 23.10; added by Ord. No. 7919 (1939), Sec. 2; amended by Ord. 287-96, App. 7/12/96; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.13 was renumbered as 23.16 by Ord. 15-01.)

SEC. 23.14. DIRECTOR OF PROPERTY'S REPORT.

With 30 days after the receipt of the request required by the preceding Section, the Director of Property shall prepare a report for the Mayor and the requesting department of the estimated fair market value of the Real Property, the character of the improvements thereon and an evaluation as to whether, in the opinion of the Director of Property, the Real Property can be advantageously used by the requesting department for the purposes specified in the request. (Formerly Sec. 23.11; added by Ord. No. 7919 (1939), Sec. 3; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.14 was renumbered as 23.17 by Ord. 15-01.)

SEC. 23.15. MAYOR'S CONSENT TO TRANSFER; CONSENT OF DEPARTMENT HAVING JURISDICTION.

If, on receipt of the Director of Property's report, the Mayor believes that the department requesting the transfer can advantageously use the Real Property, the Mayor shall request the department under whose jurisdiction it is to consent to the transfer of the Real Property to the department desiring the transfer. If the second-mentioned department consents to the transfer within 30 days, the Mayor shall recommend to the Board of Supervisors that it order the Real Property transferred, sending to the Board with the request such data regarding the Real Property as he or she has received from the Director of Property. No Real Property shall be transferred from one department to another without the consent of the department having jurisdic-

tion over the Real Property, except as provided by Section 25.18 below. (Formerly Sec. 23.12; added by Ord. No. 7919 (1939), Sec. 4; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.15 was renumbered as 23.18 by Ord. 15-01.)

SEC. 23.16. RESOLUTION AUTHORIZING TRANSFER.

Upon receiving the Mayor's recommendation that the Real Property be transferred and the consent of the department having jurisdiction, the Board of Supervisors shall consider the same. If the Board determines that the Real Property is no longer necessary or advantageous to the department having jurisdiction and can be more advantageously used by the requesting department, the Board shall, by resolution, order a transfer of the Real Property to the requesting department. Any such transfer may be made without limit or for a limited period or under other conditions stated in the resolution. (Formerly Sec. 23.13; added by Ord. No. 7919 (1939), Sec. 5; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.16 was renumbered as 23.19 by Ord. 15-01.)

SEC. 23.17. TRANSFER NOT TO VIOLATE TRUST.

No Real Property shall be transferred under this Article if the transfer would violate the terms of any gift, trust, deed restriction, bond covenants, or other covenants or restrictions under which the City holds the Real Property. (Formerly Sec. 23.14; added by Ord. No. 7919 (1939), Sec. 5; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.17 was renumbered as 23.20 by Ord. 15-01.)

SEC. 23.18. TRANSFER WITHOUT MAYOR'S OR DEPARTMENT'S CONSENT.

If, upon receipt of the Director of Property's report, the Mayor believes that the department having jurisdiction over the Real Property continues to have advantageous use therefor, that the Real Property cannot be more advantageously used by the requesting department, or

should the department having jurisdiction refuse or neglect to consent to the requested transfer, the Mayor shall transmit his or her report of the circumstances to the Board of Supervisors, together with the original request for transfer and the Director of Property's report relating thereto. Such transmittal shall be made by the Mayor within 60 days after receipt of the Director of Property's report.

Upon receipt of the transmittal from the Mayor, the Board of Supervisors or a committee thereof shall hold a public hearing thereon, at which all interested departments and individuals shall be given an opportunity to be heard.

After such hearing, if the Board of Supervisors finds that the department having jurisdiction over Real Property no longer needs or has advantageous use therefor, or finds that the Real Property can be used more advantageously by the requesting department, the Board may, by resolution, order that the jurisdiction of such Real Property be transferred to the requesting department.

Any such transfer may be made without limit or for a limited period or under other conditions stated in the resolution. (Formerly Sec. 23.15; added by Ord. No. 7919 (1939), Sec. 6; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.18 was renumbered as 23.25 by Ord. 15-01.)

SEC. 23.19. RECORD OF TRANSFER.

When the Board of Supervisors adopts any resolution transferring any Real Property from one department to another under this Article, the Director of Property shall keep a copy of the resolution in his or her office and make the necessary record of the transfer. (Formerly Sec. 23.16; added by Ord. No. 7919 (1939), Sec. 7; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.19 was renumbered as 23.26. by Ord. 15-01.)

SEC. 23.20. PAYMENT.

Transfers of Real Property pursuant to this Article shall be paid for at the current fair market value as determined by the Director of

Property, unless otherwise directed by the Board of Supervisors by resolution, provided that the Public Utilities Commission shall be paid at least the historical cost of such Real Property. (Formerly Sec. 23.17; added by Ord. No. 7919 (1939), Sec. 8; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.20 was renumbered as 23.27 by Ord. 15-01.)

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ARTICLE III: LEASES WHEN CITY IS TENANT

- Sec. 23.25. Director of Property to Make Leases.
- Sec. 23.26. Year-to-Year and Shorter Leases.
- Sec. 23.27. Execution of Leases; Resolution Authorizing Lease.
- Sec. 23.28. SFUSD Leases to the City Directly Serving the Public; Public Notice Required Prior to Termination or Expiration of the Lease.

Sec. 23.21.

(Ord. No. 208 (1939), Sec. 4; repealed by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.25. DIRECTOR OF PROPERTY TO MAKE LEASES.

Each department of the City authorized by the approval of bond issues or by annual or supplemental appropriation ordinances to Lease Real Property needed for the purposes of such department shall make such Leases through the Director of Property, except as otherwise specifically provided by the Charter or this Code. (Formerly Sec. 23.18; added by Ord. No. 208 (1939), Sec. 1; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.25 was renumbered as 23.34 by Ord. 15-01.)

Sec. 23.25-1.

(Added by Ord. 439-96, App. 11/8/96; repealed by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.25-2.

(Added by Ord. 439-96, App. 11/8/96; amended and renumbered as Sec. 23.40 by Ord. 15-01, File No. 001965, App. 2/2/2001)

Sec. 23.25-3.

(Added by Ord. 439-96, App. 11/8/96; amended and renumbered as Sec. 23.41 by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.26. YEAR-TO-YEAR AND SHORTER LEASES.

The Director of Property shall have the authority to enter into the following Leases on behalf of the City as tenant: (i) on a year-to-year or shorter tenancy where the rental or other consideration to be paid for the City occupancy or use of Real Property within the City and County of San Francisco is \$5,000 or less per month, and (ii) where the term of a Lease will not exceed 31 days, including without limitation month-to-month Leases.

The Director of Property may include in any Lease authorized by this Section an appropriate indemnity agreement for the purpose of providing for the City's occupancy or other use of such Real Property (including, without limitation, conducting environmental investigations and assessments), subject, however, to written approval as to form by the City Attorney and written recommendation by the head of the department concerned.

The Director of Property shall determine the rental or other consideration to be paid for all such Real Property and shall obtain from the Controller written certification that funds are available for such Lease. The department concerned shall give written notice to the Director of Property when such Lease is terminated by the City. (Formerly Sec. 23.19; amended by Ord. 25-83, App. 1/14/83; Ord. 284-90, App. 7/24/90; Ord. 253-95, App. 8/10/93; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.26 was repealed as 23. by Ord. 15-01.)

Sec. 23.26A.

(Added by Ord. 355-98, App. 12/11/98; repealed by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.27. EXECUTION OF LEASES; RESOLUTION AUTHORIZING LEASE.

Except as otherwise provided by the Charter, Section 23.26 above, or other provision of this

Code, the Board of Supervisors shall approve all Leases on behalf of the City as tenant by resolution. Before adoption, the head of the department concerned shall recommend any such resolution for approval by the Board of Supervisors. All such Leases shall be executed by the Director of Property or as otherwise directed by resolution of the Board of Supervisors. (Formerly Sec. 23.20; added by Ord. No. 208 (1939), Sec. 3; amended by Ord. 113-96, App. 3/13/96; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.27 was renumbered as 23.45 by Ord. 15-01.)

SEC. 23.28. SFUSD LEASES TO THE CITY DIRECTLY SERVING THE PUBLIC; PUBLIC NOTICE REQUIRED PRIOR TO TERMINATION OR EXPIRATION OF THE LEASE.

(a) Whenever the City leases property from the San Francisco Unified School District ("the School District") and the City uses the property in a manner directly serving the public, such as for a public parking area or an athletic field, the notification provisions of subsection (b) shall apply.

(b) Not less than 30 days prior to the termination of the lease by the School District, or the expiration of the lease if the parties do not renew the agreement, the City department having jurisdiction over the subject property under the lease shall cause notice of the proposed action be given as follows:

(1) Notice shall be posted on the subject property in accordance with the requirements established by the Zoning Administrator under Planning Code Sections 311 and 312.

(2) Written notice of the termination or expiration of the lease shall be mailed to all owners and, to the extent practicable, occupants of properties within 150 feet of the subject property in the same Assessor's Block and on the block face across from the subject property. When the subject property is a corner lot, the notification area shall further include all property on both block faces across from the subject property, and the corner property diagonally across the street. The

latest City-wide Assessor's roll for names and addresses of owners shall be used for such notice.

(3) Written notice of the termination or expiration of the lease shall also be mailed to persons or organizations that have indicated an interest in the subject property or its area by including their names on a list maintained by the Planning Department.

(c) The notification requirements of subsection (b) shall also apply when the City uses or controls School District property by virtue of a permit, license, or similar agreement other than a lease. If the City itself receives less than 45 days notice from the School District of the termination or expiration of a lease or other agreement, the City department having jurisdiction over the subject property under the lease or other agreement shall provide the notice required under subsection (b) to the extent reasonably possible under the circumstances. (Added by Ord. 159-07, File No. 070411, App. 7/3/2007)

ARTICLE IV: LEASES WHEN CITY IS LANDLORD

- Sec. 23.30. Lease of Real Property.
- Sec. 23.31. Year-to-Year and Shorter Leases.
- Sec. 23.32. Advisory Review by Director of Property.
- Sec. 23.33. Competitive Bidding Procedures.
- Sec. 23.34. Lease Reporting.
- Sec. 23.35. Re-Lease Real Property to Existing Tenant on a Negotiated Basis.
- Sec. 23.36. Lease of Real Property under Recreation and Parks Commission and Public Utilities Commission Jurisdiction.
- Sec. 23.37. Real Estate Department to Collect Rents.
- Sec. 23.38. Agreements for Private Use of City Property; Possessory Interest Taxes.
- Sec. 23.39. Taxable Possessory Interests in Tax-Exempt Real Property; Report of Agreement and Change of Ownership or Extension of Agreement.
- Sec. 23.40. Sale or Lease of Park Land; Use of Certain Park Land for the Construction of Water Quality and Sewerage Facilities.
- Sec. 23.41. Transfer of Park and Other Lands to the National Park Service of the United States Department of the Interior.

SEC. 23.30. LEASE OF REAL PROPERTY.

Except as provided by Sections 4.112, 4.113, 4.114, 4.115, and B3.581 of the Charter and by Sections 2A.173 and 23.36 and of this Code, or as otherwise provided by the Charter or this Code, the Director of Property shall have the charge of the Lease of Real Property owned by the City.

When the head of any department in charge of Real Property reports to the Director of Property that certain land is not required for the purposes of the department, the Board of Supervisors, by resolution, may authorize the Lease of such Real Property. The Director of Property shall arrange for such Lease to the highest responsible bidder in accordance with Competitive Bidding Procedures, unless the Board of Supervisors has by resolution found that such Competitive Bidding Procedures are impractical or impossible or has authorized other means of award in furtherance of a proper public purpose. The Director of Property shall collect rents due under such Lease. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.30 was renumbered as 23.48 by Ord. 15-01.)

SEC. 23.31. YEAR-TO-YEAR OR SHORTER LEASES.

If any department in charge of City-owned Real Property requests the Director of Property to Lease, City-owned Real Property, the Director of Property shall have the authority to enter into the following Leases on behalf of the City as Landlord: (i) on a year-to-year or shorter tenancy, where such Real Property has a fair market rental value of \$5,000 or less per month, and (ii) where the term of a Lease will not exceed 31 days, including without limitation month-to-month Leases. In addition, where, in the opinion of the Director of Property, the Leasing of such Real Property for landscaping or gardening serves a public purpose, the Director of Property may Lease such Real Property at a nominal rental, on a year-to-year or shorter tenancy, and on such other terms and conditions as the Director of Property may require.

Within 10 days after entering into any Lease under this Section, the Finance Committee of the Board of Supervisors shall be notified by the

Director of Property as to the terms and conditions of such Leases. (Formerly Sec. 23.22; amended by Ord. 323-86, App. 8/8/86; Ord. 284-90, App. 7/24/90; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.31 was renumbered as 23.50 by Ord. 15-01.)

SEC. 23.32. ADVISORY REVIEW BY DIRECTOR OF PROPERTY.

Any commission, board or department that, under the Charter or this Code, is given exclusive power to Lease Real Property under its control and management may submit any proposed Lease to the Director of Property for review and advisory recommendations and may request the Director of Property to determine fair market rental rates to aid and assist in negotiating, extending or renewing such Leases. It is the City's policy that all commissions, boards and departments that negotiate and administer such Leases submit all proposed Leases which have a term, including extension options, of five years or more, or which would produce more than \$500,000 in revenue over such term, to the Director of Property for review and advisory recommendations before final approval of any such Lease and, as to such Leases, request the Director of Property to determine fair market rental rates to aid and assist in negotiating, extending or renewing such Leases. The purpose of this policy is to achieve greater consistency and coordination in the City's Leasing practices, to increase the financial return to the City from its Leases and to avoid unnecessary duplication of effort and expense in the Leasing of City Real Property. (Formerly Sec. 23.23; added by Ord. 323-86, App. 8/8/86; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001; amended by Ord. 278-04, File No. 041352, App. 11/18/2004. Former Sec. 23.32 was renumbered as 23.51 by Ord. 15-01.)

SEC. 23.33. COMPETITIVE BIDDING PROCEDURES.

To the extent that any ordinance, Code provision or Charter provision gives the City, or any of its commissions, boards or departments, power

to award Leases without competitive bidding, it shall be City policy that, notwithstanding such power, all such Leases that are expected to produce more than \$2,500 per month in revenue be awarded in accordance with Competitive Bidding Procedures, unless such Competitive Bidding Procedures are impractical or impossible. It shall also be City policy that any and all Leases awarded without following the Competitive Bid Procedures shall be in an amount not less than the fair market value of the leased property. If any City department wishes to award a Lease of City-owned property for less than fair market value, it shall make a finding of the public purpose to be served by such Lease, and such Lease and finding shall be subject to the prior approval of the Mayor and the department head, as well as the applicable commission. If there is no commission approval, then such Lease and finding shall also be subject to the prior approval of the Board of Supervisors. The Lease shall also require that the tenant will use the leased premises in accordance with the stated public purpose for the entire lease term. The provisions of this Section shall not apply to any leases awarded pursuant to San Francisco Administrative Code Chapter 23A, the Surplus City Property Ordinance. (Formerly Sec. 23.24; added by Ord. 323-86, App. 8/8/86; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001; amended by Ord. 278-04, File No. 041352, App. 11/18/2004. Former Sec. 23.33 was renumbered as 23.52 by Ord. 15-01.)

SEC. 23.34. LEASE REPORTING.

Each commission, board and department that is empowered by the Charter, City ordinance, this Code or State statute to Lease City-owned Real Property shall, within 10 days after the close of each quarter of a fiscal year ("fiscal quarter"), file with the Budget Analyst for the Board of Supervisors and post on the commission, board or department website a written report of all Leases of City-owned Real Property awarded during the preceding fiscal quarter which were less than fair market value or which were not submitted for approval by the Board of Supervisors.

The report shall contain the following information for each Lease:

1. Tenant's name.
2. Term of the Lease, including any extension options.
3. Rental amount, including, any percentage rent and rent escalation or adjustment provisions, and, if applicable, the finding of public purpose for why the rent was set at less than fair market value.
4. Location of Leased Real Property.
5. If unimproved Real Property, dimensions and area of Real Property.
6. If improved Real Property, description of improvements and floor area of Leased space.
7. Use to be made of premises by the tenant.

The Budget Analyst shall review each report and may report his or her comments and recommendations to the Board of Supervisors, as the Budget Analyst deems appropriate. (Formerly Sec. 23.25; added by Ord. 323-86, App. 8/8/86; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001; amended by Ord. 278-04, File No. 041352, App. 11/18/2004. Former Sec. 23.34 was renumbered as 23.53 by Ord. 15-01.)

SEC. 23.35. RE-LEASE REAL PROPERTY TO EXISTING TENANT ON A NEGOTIATED BASIS.

Notwithstanding any other provision in this Chapter, where the City Acquires Real Property which at the time of Acquisition is under a Lease to a tenant from the previous owner, the Director of Property may, subject to the approval by resolution of the Board of Supervisors, upon expiration of such Lease, negotiate at a fair market rental a new Lease for such Real Property with the same tenant on a term designated by the Board of Supervisors, until such time as required for the purposes of the department in charge of such Real Property. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.35 was renumbered as 23.54 by Ord. 15-01.)

SEC. 23.36. LEASE OF REAL PROPERTY UNDER RECREATION AND PARKS COMMISSION AND PUBLIC UTILITIES COMMISSION JURISDICTION.

In addition to the delegation of authority set forth in Sections 4.112, 4.113, 4.114, 4.115, and B3.581 of the Charter and by Section 2A.173 of this Code, (i) pursuant to Charter Section 4.113, the Recreation and Parks Commission shall have the power to Lease Real Property under its jurisdiction subject to approval by the Board of Supervisors as required by Charter Section 9.118 and any other applicable provision of the Charter or this Code, and (ii) pursuant to Charter Section 4.112, the Public Utilities Commission shall have exclusive power to Lease Real Property under its jurisdiction, subject to approval by the Board of Supervisors as required by Charter Section 9.118 and any other applicable provision of the Charter or this Code. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.35 was renumbered as 23.55 by Ord. 15-01.)

SEC. 23.37. REAL ESTATE DEPARTMENT TO COLLECT RENTS.

The Real Estate Department is authorized and directed to collect all rents due under Leases of City-owned Real Property, except as otherwise provided in the Charter or this Code. All moneys received by the Real Estate Department in payment of rents shall be deposited in the proper funds to the credit of the various departments having control of the City-owned Leased Real Property. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001. Former Sec. 23.37 was renumbered as 23.56 by Ord. 15-01.)

SEC. 23.38. AGREEMENTS FOR PRIVATE USE OF CITY PROPERTY; POSSESSORY INTEREST TAXES.

All agreements permitting the use for private gain Real Property situated in the City and County of San Francisco and owned by the City, including any agency thereof, shall contain a clear and unequivocal understanding that a possessory interest subject to taxation may be created and that the party with the right to use

such Real Property shall pay any and all possessory interest taxes levied upon his or her interest therein pursuant to an assessment made by the Assessor. However, the Board of Supervisors may by resolution specifically authorize and approve to be included in such agreement a provision for the City's assumption of the payment of such possessory interest taxes, in whole or in part, or for an offset against revenues otherwise due and payable to the City under such agreement in an amount equal to all or a portion of such possessory interest taxes.

Such agreement shall also provide that the holder of such interest shall, upon request, furnish the information required in Section 23.39 of this Code to the City within 30 days of any transaction that is subject to the reporting requirements of such Section.

Within 60 days after execution of an agreement pertaining to the use of City Real Property as described above, the agency executing such agreement on behalf of the City shall forward or cause the holder of such interest to forward, a copy of the agreement to the Assessor of the City and County of San Francisco, as required in Section 23.39 below.

As used in this section and in Section 23.39 below, the term "agreement" shall mean any written contract, instrument or other document permitting the possession, occupancy or use of City Real Property including, but not limited to, Leases, concession agreements, franchise agreements and management agreements. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.39. TAXABLE POSSESSORY INTERESTS IN TAX-EXEMPT REAL PROPERTY; REPORT OF AGREEMENT AND CHANGE OF OWNERSHIP OR EXTENSION OF AGREEMENT.

In accordance with Revenue and Taxation Code Section 480.5, every owner of tax-exempt Real Property shall report to the assessor of the City and County of San Francisco the creation, renewal, extension, assignment, sublease or other transfer of any interest granted under an agreement to use such Real Property, within 60 day of

the transaction. The report shall be on such form as the Assessor may prescribe and shall include, at a minimum, all of the following:

- (a) The name and address of the owner.
- (b) The names and addresses of all other parties to the transaction, including an identification of each party and of his or her interest under the agreement.
- (c) The type of transaction, whether creation, renewal, extension, sublease, assignment, transfer or otherwise.
- (d) A description of the Real Property, which is the subject of the agreement.
- (e) The effective date of the transaction.
- (f) A summary of the essential terms of the transaction, including, but not limited to, all of the following:
 - (1) The consideration for the interest, whether paid in money or otherwise.
 - (2) The term of the agreement, including any renewal or extension option.
 - (3) If a sublease or other agreement subject to an underlying agreement, the original terms, remaining term and consideration paid for the master lease or other master agreement.
 - (4) If an assignment or other transfer, the original term, remaining term, and the consideration paid for the underlying Lease or agreement. (Added by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.40. SALE OR LEASE OF PARK LAND; USE OF CERTAIN PARK LAND FOR THE CONSTRUCTION OF WATER QUALITY AND SEWERAGE FACILITIES.

(a) Whenever lands that are or shall be used or intended for use for parks or squares are no longer needed for park or recreational purposes, the City may dispose of such lands or may abandon or discontinue their use for park purposes, provided that nothing herein shall be construed to authorize the discontinuance or abandonment of the use of such lands, or any change in the use thereof that will cause the reversion of such lands to private ownership, or cause the forfeiture of the ownership thereof in

fee by the City, or to authorize the discontinuance of the use of park lands acquired in any proceeding wherein a local assessment based on benefits was or shall be levied to provide funds for such acquisition; and provided further that the general laws of the State of California authorizing municipal corporations to abandon or to discontinue the use of land for park purposes, authorizing the disposition of such lands, and providing procedures therefor and for matters relating thereto, shall be applicable to the City and to all lands held or used by it for park purposes and shall govern and control exclusively in respect thereto. For the purposes of this subsection, all lands, including but not limited to, playgrounds, athletic facilities, and lands purchased with open space acquisition and park renovation funds, but excluding the Great Highway, the land described in Subsection (b) below, and lands administered by the Recreation and Park Department pursuant to agreements with other City departments or entities, placed under the jurisdiction of the Recreation and Park Department shall be deemed used or intended for use for park purposes.

(b) Upon approval by the Recreation and Park Commission, that parcel of land south of the Zoo and between the Great Highway Extension and Skyline Boulevard set forth and described in parcel map entitled "Parcel Map Showing Certain Park Land Proposed to be Used Jointly," recorded August 12, 1975 in Parcel Map Book Number One at page 96 in the office of the Recorder of the City and County of San Francisco, may be used for the construction of water quality and sewerage facilities, and any facilities so constructed shall be under the control, management, and direction of the Department of Public Works. Any recreation or zoo facilities constructed on said parcel shall remain under the control, management, and direction of the Recreation and Park Commission. (Formerly Sec. 23.25-2; added by Ord. 439-96, App. 11/8/96; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.41. TRANSFER OF PARK AND OTHER LANDS TO THE NATIONAL PARK SERVICE OF THE UNITED STATES DEPARTMENT OF THE INTERIOR.

(a) Upon approval by the Recreation and Park Commission, the Board of Supervisors may by resolution authorize transfer by deed to the National Park Service of the United States Department of the Interior for inclusion in the Golden Gate National Recreation Area as presently defined and delimited by Public Law 92-589, 86 Stat. 1299, of any interest which the City has in lands restricted to use for recreation or park purposes or otherwise under the exclusive control, management or direction of the Recreation and Park Commission, except the premises and grounds of the Palace of the Legion of Honor and Lincoln Park Golf Course, provided that such deed shall be executed under the restriction that the transferred lands be reserved in perpetuity for recreation or park purposes by the National Park Service of the United States Department of the Interior and shall grant the City a power of termination upon a breach of such restriction, and provided further that said transfer shall be executed under such conditions and restrictions as shall prevent the reversion of any portion of such lands to any person or entity other than the City.

(b) Upon approval of the officer, board or commission in charge of the department responsible for the administration of any interest which the City has in Real Property not referred to in Subsection (a), the Board of Supervisors may by resolution authorize transfer of such interest by deed to the National Park Service of the United States Department of the Interior for inclusion in the Golden Gate National Recreation Area as presently defined and delimited by Public Law 92-589, 86 Stat. 1299, provided that said deed shall be executed under the restriction that said lands be reserved by the National Park Service of the United States Department of the Interior in perpetuity for recreation or park purposes with a power of termination upon breach of said restriction, and provided further that said transfer shall be executed under such conditions and restrictions as shall prevent the reversion of any

portion of said lands to any person or entity other than the City. (Formerly Sec. 23.25-3; added by Ord. 439-96, App. 11/8/96; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

ARTICLE V: LOT LINE WINDOW AGREEMENTS

- Sec. 23.45. Authority of Director of Property.
- Sec. 23.46. Determination of Value.
- Sec. 23.47. Requirements for Lot Line Window Agreements.
- Sec. 23.48. Fees and Fee Payments.

SEC. 23.45. AUTHORITY OF DIRECTOR OF PROPERTY.

An owner of Real Property adjoining Real Property of the City may request that the City consent to openings in building walls on the owner's Real Property that are closer to the common property line than the distances prescribed in the San Francisco Building Code by filing with the Director of Property an original and two copies of a written application, together with plans, specifications and other supporting documents, and paying the required application fee. Upon such filing, the Director of Property shall investigate the application and consult with the department that has jurisdiction over the Real Property. Copies of the application and its supporting documents shall be delivered by the Director of Property to the Department of City Planning and the Bureau of Building Inspection for review and comment as that department and that bureau may deem appropriate. If the department having jurisdiction over the Real Property approves and the Director of Property concludes that it is in the best interest of the City to give the requested consent, the Director of Property is authorized to approve and execute a lot line window agreement which complies with all of the provisions of this Article. (Formerly Sec. 23.27; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.46. DETERMINATION OF VALUE.

The Director of Property shall determine a monthly fee for the privilege of installing the

openings in building walls that are made possible by the City's consent. The monthly fee shall be based upon an appraisal by the Director of Property of the enhancement in fair market value of the building owner's Real Property that will result from installation of the proposed openings in building walls.

If the original monthly fee based upon the Director of Property's appraisal is more than \$50 the agreement shall provide for payment by the building owner, in advance, of the monthly fee so determined by the Director of Property. The monthly fee may, at the Director of Property's discretion, be payable monthly, quarterly, semi-annually or annually. The agreement shall contain a provision for annual adjustment of the monthly fee to reflect increases or decreases in the Consumer Price Index for all Urban Consumers for the San Francisco-Oakland Metropolitan Area and a provision for a redetermination of the monthly fee by the Director of Property, upon the same appraisal basis as the original fee determination, at the end of each five-year period.

If the original monthly fee based upon the Director of Property's appraisal is \$50 or less, a one-time fee of \$1,000 shall be paid by the building owner and no monthly fees shall be payable. (Formerly Sec. 23.28; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.47. REQUIREMENTS FOR LOT LINE WINDOW AGREEMENTS.

All lot line window agreements shall comply with the following requirements:

1. The building to which the agreement relates shall comply with the Building Code and all other applicable codes, ordinances and regulations of the City and with all applicable federal and State laws and regulations.

2. The building shall be constructed or remodeled in conformity with the plans and specifications submitted with the application for a lot line window agreement and shall be used for the purposes stated in the application.

3. The agreement shall be terminable at any time, with or without cause and without penalty, by either party. The termination will not be effective, however, unless the terminating party gives at least 90 days prior written notice of termination which is mailed or delivered to the other party. The notice of termination shall contain the legal descriptions of both properties and shall be acknowledged by the terminating party. The notice of termination may be recorded by either party at any time and, after the termination date, the recorded notice shall be conclusive proof of termination of the agreement.

4. The building owner shall agree that, in the event the agreement is revoked, the openings consented to by the agreement shall be protected or closed, as required by the Building Code, and the building otherwise modified as may be necessary to comply with those Building Code requirements that become applicable because of protecting or closing the openings.

5. The building owner shall indemnify the City, its officers, employees and agents, against all liabilities that may result from or be connected with the agreement.

6. During the life of the agreement, the building owner shall maintain comprehensive personal liability insurance with limits satisfactory to the Risk Manager of the City and with the City, its officers, agents and employees named as additional insureds.

7. The agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

8. The agreement shall be executed by both parties and shall contain the legal descriptions of both properties. The Director of Property shall execute the agreement for and on behalf of the City, provided the agreement has been previously approved by the City Attorney and the head of the department having jurisdiction over the City's Real Property. The agreement shall be acknowledged by both parties and the Director of Property shall cause the agreement to be recorded. (Formerly Sec. 23.29; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.48. FEES AND FEE PAYMENTS.

The application fee which is to accompany each application shall be \$2,500 unless changed by appropriate action of the Board of Supervisors. If the Director of Property determines, after his investigation of the application, that the application fee is inadequate to cover the cost of preparing and processing an agreement, the Director of Property shall notify the building owner of the additional amount that is required. The additional amount shall be paid by the building owner as a prerequisite to preparation and processing of an agreement by the Real Estate Department.

The Real Estate Department is authorized to collect the fees due under lot line window agreements and shall deposit such fees to the credit of the department having jurisdiction over the City's Real Property.

The application fees and any additional amounts required to cover the cost of preparing and processing agreements shall be deposited to the credit of the Real Estate Department. (Formerly Sec. 23.30; added by Ord. 559-85, App. 12/27/85; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

ARTICLE VI: LABOR REPRESENTATION PROCEDURES IN HOTEL AND RESTAURANT DEVELOPMENTS IN WHICH THE CITY HAS AN ONGOING PROPRIETARY INTEREST

- Sec. 23.50. Findings and Declarations.
- Sec. 23.51. Definitions.
- Sec. 23.52. Policy, Requirements and Procedures to Minimize Labor/Management Conflict When City Has Proprietary Interest.
- Sec. 23.53. Scope and Exemptions.
- Sec. 23.54. Enforcement.
- Sec. 23.55. Effective Date and Application.
- Sec. 23.56. Severability.

SEC. 23.50. FINDINGS AND DECLARATIONS.

(1) In the course of managing Real Property that it owns or in otherwise carrying out its functions in the public interest, the City and County of San Francisco (hereinafter "City") occasionally participates in Real Property development as a landlord, proprietor, lender or guarantor, facing the same risks and liabilities as other business entities participating in such ventures. For example, the City sometimes Leases its Real Property under a percentage Lease, or otherwise invests or pledges its resources in real estate development projects as a landlord, a lender or a guarantor. When it does, the City has an ongoing proprietary interest in that development, and, thus, has a direct interest in its performance.

(2) In such situations, the City must make prudent business decisions, as does any private business entity, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk. One of those risks is the possibility of labor/management conflict arising out of labor union organizing campaigns. Such conflict can adversely affect the City's investment in real estate developments or other circumstances in which it has a proprietary business interest by causing delay in

the completion of projects, and/or by reducing revenues or increasing costs of the project when they are completed.

(3) These risks are heightened in the hotel and restaurant industry because they are so closely related to tourism-a mainstay of San Francisco's economy. Labor strife in hotel or restaurant projects in which the City is an investor or other economic participant can jeopardize the operation of related tourist and commercial facilities, as well as the City's national reputation as a tourist and convention destination. To minimize that risk in circumstances where costly labor/management conflict has arisen in the past, the City enacts this Article which requires that certain specified employers in the hotel and restaurant industry shall agree, as a condition of the City's economic involvement in a hotel or restaurant project, to nonconfrontational and expeditious procedures by which their workers can register their preference regarding union representation.

(4) A major potential source of labor/management conflict that threatens the economic interests of the City as a participant in development projects is the possibility of economic action taken by labor unions against employers in those developments when labor unions seek to organize their workers over employer opposition to unionization. Experience of municipal and other investors has demonstrated that organizing drives pursuant to formal and adversarial union certification processes often deteriorate into protracted and acrimonious labor/management conflict. That conflict potentially can result in construction delays, work stoppages, picketing, strikes and more recently, in consumer boycotts or other forms of "corporate campaigns" that can generate negative publicity and reduced revenues that threaten the interests not only of the immediate "target" of such tactics, i.e., the

employer, but of other investors in the development, and also the City's special interests identified herein.

(5) These risks of potential labor/management conflict are particularly acute when labor unions seek to organize workers in hotels and restaurants, as labor relations in the hospitality industry in San Francisco have proven especially contentious, and have resulted in many protests, boycotts and other activities which have disrupted the business of the hotel or restaurant and the tourist industry and the downtown hotel area.

(6) In view of these concerns, the City deems it necessary to approach with great caution any economic participation in a hotel or restaurant project if the City retains a proprietary interest, either as landlord, lender or guarantor. The City finds that cautionary approach to be particularly appropriate given other possible factors present in such developments, such as the City's sometimes special proprietary interests or other special concerns identified herein, and/or their complex financing schemes, the possible use of scarce land resources, as well as the dependence of such projects on public "good will" and the special vulnerability of such projects to consumer boycotts, etc.

(7) One way to reduce the City's risk where it has a proprietary interest in a hotel or restaurant project is to require, as a condition of the City's investment or other economic participation, that employers operating in the hotel or restaurant project agree to a lawful, nonconfrontational alternative process for resolving a union organizing campaign. That alternative process is a so-called "card check," wherein employee preference regarding whether or not to be represented by a labor union to act as their exclusive collective bargaining representative is determined based on signed authorization cards. Private employers are authorized under existing federal law to agree voluntarily to use this procedure in lieu of NLRB-supervised election procedures.

(8) The Board of Supervisors finds based on local history that compliance with these procedures will help reduce the possibility of labor/management conflict jeopardizing the City's proprietary interest in a hotel or restaurant project. To ensure that card check procedures are required only to the extent necessary to ensure the goal of minimizing labor/management conflict, an employer who agrees to such procedures and performs its obligations under a card check agreement will be relieved of further obligation to abide by those procedures if a labor organization engages in economic action such as striking, picketing or boycotting the employer in the course of an organizing drive and at a site covered by this Article.

(9) The sole purpose of this Article is to protect the City's proprietary interest in a particular hotel or restaurant project covered hereby. This Article is not enacted to favor any particular outcome in the determination of employer preference regarding union representation, nor to skew the procedures in such a determination to favor or hinder any party to such a determination. Likewise, this Article is not intended to enact or express any generally applicable policy regarding labor/management relations, or to regulate those relations in any way, but is intended only to protect the City's proprietary interest in certain narrowly prescribed circumstances where the City commits its economic resources and/or its related interests are put at risk by certain forms of labor/management conflict. (Formerly Sec. 23.31; added by Ord. 6-98, App. 1/16/98; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.51. DEFINITIONS.

For purposes of this Article, the following definitions shall apply:

(1) "Card check agreement" means a written agreement between an employer and a labor organization providing a procedure for determining employee preference on the subject of whether to be represented by a labor organization for

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collective bargaining, and if so, by which labor organization to be represented, which provides, at a minimum, the following:

(a) Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;

(b) All disputes over interpretation or application of the parties' card check agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;

(c) Forbearance by any labor organization from economic action against the employer at the worksite of an organizing drive covered by this Article, and in relation to an organizing campaign only (not to the terms of a collective bargaining agreement), so long as the employer complies with the terms of the card check agreement;

(d) Language and procedures prohibiting the labor organization or the employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

(2) "City contract" means a Lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the City is a party and in which the City has a proprietary interest.

(3) "Collective bargaining agreement" means an agreement between an employer and a labor organization regarding wages, hours and other terms and conditions of employment of the employer's employees. For purposes of this Article, a collective bargaining agreement does not include a card check agreement as defined herein.

(4) "Developer" means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, Lease, develop, build, remodel or otherwise establish a hotel or restaurant project.

(5) "Economic action" means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an em-

ployer, as part of a campaign to organize employees or prospective employees of that employer, including such activities as striking, picketing, or boycotting. A lawsuit to enforce this Article is not "economic action."

(6) "Employer" means any developer, manager/operator or subcontractor who employs individuals in a hotel or restaurant in a hotel or restaurant project.

(7) "Hotel or restaurant project" means a development project or facility in which the City has a proprietary interest and which contains a hotel or restaurant. For purposes herein a "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a stadium, hotel or retail store. A hotel or restaurant project, as defined herein, includes a mixed-use development project in which the City has a proprietary interest which contains a hotel or restaurant, regardless of whether the City's proprietary interest is in the hotel or restaurant portion of such mixed-use development or the mixed-use development project as a whole. Notwithstanding the foregoing or anything else contained herein, the requirement in this Article that an employer enter into a card check agreement shall apply only to those employers who employ employees in a hotel or restaurant and shall not apply to those portions of a mixed-use development project which do not contain a hotel or restaurant.

(8) "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(9) "Manager/operator" means any person, corporation, association, limited or general partnership, joint venture or other entity (including

a developer) that operates or manages a hotel or restaurant in a hotel or restaurant project, or provides any material portion of the services provided by such hotel or restaurant in a hotel or restaurant project, whether by subcontract or City contract.

(10) "Proprietary interest" means any non-regulatory arrangement or circumstance in which the financial or other nonregulatory interests of the City in a hotel or restaurant project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign, in the following circumstances:

(i) The City receives significant ongoing revenue (such as rent payments) under a Lease of Real Property owned by the City for the development of a hotel or restaurant project, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (ii)); or

(ii) The City receives ongoing revenue from a hotel or restaurant project to pay debt service on bonds or loans provided by the City to assist the development of such hotel or restaurant project (including incremental tax revenues generated by the hotel or restaurant project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the City where the proceeds are used for development of that hotel or restaurant project or the development project in which it is located);

(iii) The City has agreed to underwrite or guarantee the development or operation of a hotel or restaurant project, or loans related thereto.

In addition to the circumstances described in (i)—(iii) above, the City shall be deemed to have a proprietary interest in a hotel or restaurant project if the City determines or an interested party demonstrates prior to the effective date of the subcontract or City contract pursuant to which a hotel or restaurant will be operated in a hotel or restaurant project that there is a significant risk that the City's financial or other non-regulatory interest in a hotel or restaurant project

could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign except that no circumstance or arrangement shall be considered "financial or non-regulatory" under this definition if it is such that arises from the exercise of regulatory or police powers such as taxation, (except as provided in (ii) above), zoning or the issuance of permits and licenses.

(11) "Subcontract" means any Lease, sublease, management agreement or other similar agreement between a developer or a manager/operator and a subcontractor which contemplates or permits the subcontractor to operate or manage all or a portion of a hotel or restaurant in a hotel or restaurant project.

(12) "Subcontractor" means any person, corporation, association, limited or general partnership, limited liability company, joint venture or other entity that enters into a subcontract with a developer or manager/operator.

(13) "Substantial amendment" to a Pre-Existing Agreement, for purposes of the exemption for Employers operating before the effective date of this Chapter in Section 23.53(b)(2) and Section Two of Ordinance No. 108-99, means an amendment to or renewal or extension of a Pre-Existing Agreement that provides for or permits any of the following:

(a) A change in use within the scope of this Article (i.e., which provides for the operation of a hotel or restaurant);

(b) An increase in square footage, seating or rooms of more than 25%; except neither of the following, by themselves, shall constitute a substantial amendment:

(i) Addition of outside seating or patio dining which increases the total seating or square footage devoted to seating by less than 25%;

(ii) An increase in space for purpose of parking or storage; or

(c) A new Lease period of greater duration than the period provided in the Pre-Existing Agreement. (Formerly Sec. 23.32; added by Ord. 6-98, App. 1/16/98; amended by Ord. 108-99, File No. 990298, App. 5/7/99; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

**SEC. 23.52. POLICY, REQUIREMENTS
AND PROCEDURES TO MINIMIZE
LABOR/MANAGEMENT CONFLICT WHEN
CITY HAS PROPRIETARY INTEREST.**

(a) **General Policy.** The Board of Supervisors declares as a matter of general policy that when the City retains or acquires a proprietary interest in a hotel or restaurant project, it is essential for the protection of the City's investment and/or business interests to require that employers operating a hotel or restaurant in such hotel or restaurant project agree to abide by card check procedures for determining employee preference on the subject of labor union representation, as specified in this Article.

(b) **Primary Obligations.** Pursuant to the policy stated in Subsection (a), the following requirements are imposed, except no Employer, Developer or Manager/Operator shall be responsible for obligations under this Article if that person or entity is otherwise exempt from those obligations pursuant to Section 23.53(b), or if the City does not have a Proprietary Interest in the subject Hotel or Restaurant Project:

(1) **Employers.** An employer of employees working in a hotel or restaurant in a hotel or restaurant project, shall:

(i) Enter into a card check agreement, as specified in this Article, with a labor organization which requests such an agreement for the purpose of seeking to represent those employees before executing the subcontract or City contract pursuant to which it will operate a hotel or restaurant in a hotel or restaurant project;

(ii) If the parties are unable to agree to the terms of a card check agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a card check agreement will be imposed by an arbitrator. In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model card check agreement provided by the City and/or to prevailing practices and the terms of card check agreements in the same or similar

industries, except that such card check agreement must include the mandatory terms identified in Section 23.51(1);

(iii) Comply with the terms of that card check agreement and this Article; and

(iv) Include in any subcontract which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project, as defined herein, or to provide a service essential to the operation of such hotel or restaurant, a provision requiring that subcontractor to comply with the requirements provided in this Article. This provision shall be a material and mandatory term of such subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

"The City and County of San Francisco has enacted an Ordinance at Chapter 23, Article VI of its Administrative Code, commencing at Section 23.50, which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Ordinance, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Article, and to otherwise fully comply with the requirements of that Article. [Subcontractor] recognizes that, as required by that Article, it must enter into a Card Check Agreement with a Labor Organization(s) as specified by that Article before executing this [Subcontract], and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this [Subcontract]."

Notwithstanding the requirements provided in (i)—(iv), any employer who has in good faith fully complied with those requirements will be excused from further compliance as to a labor organization which has taken economic action against that employer at that site in furtherance

of a campaign to organize that employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to economic action against an employer at other locations where that employer does business, or at any location for purposes other than organizing the employer's employees; nor shall economic action by one labor organization excuse an employer from the obligations of this Article or a card check agreement as to a different labor organization.

(2) Developers and Manager/Operators.

Any developer or manager/operator of a hotel or restaurant project must:

(i) To the extent it employs employees in a hotel or restaurant in a hotel or restaurant project, abide by the requirements stated in Subsection (1);

(ii) Include the provision specified in (1)(iv) in any subcontract, modified as necessary to accommodate the circumstances of that particular subcontract;

(iii) Refrain from executing a subcontract by which an employer subject to (1) is authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until that employer has entered into a card check agreement with a labor organization, as required in (1);

(iv) Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project which may be subject to the requirements of (1), as soon as the developer or manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later than 21 days before requiring an employer to sign a subcontract. This notification requirement applies only to hotels or restaurants or employers that will operate in a Hotel or Restaurant Project, as defined herein, and only where the City's proprietary interest is based on a Lease, a loan, or a guarantee, as specified in Section 23.51(10)(i)–(iii);

(v) Inform any prospective subcontractor, that if the subcontractor acts as an employer subject to the requirements of (1), it must enter into a card check agreement pursuant to this

Article before it may execute the subcontract, and as a condition precedent to any rights or obligations under such document;

(vi) Take reasonable steps to enforce the terms of any subcontract requiring compliance with this Article. To the extent a developer or manager/operator is found to have intentionally aided, abetted or encouraged a subcontractor's failure to comply with such a provision or the terms of this Article, either by action or inaction, that developer or manager/operator shall be jointly and severally liable for all damages awarded pursuant to Section 23.54.

(3) The City.

(i) **City Contracts.** Any City contract executed under the authority of any commission, department, authority or officer of the City, which contemplates the use or operation of a hotel or restaurant in a hotel or restaurant project must include a provision requiring that any developer or operator/manager of a hotel or restaurant project pursuant to that City contract, and any employer(s) operating in such hotel or restaurant project, agree to comply with the requirements imposed in Subsections (1) and (2), as essential consideration for the City entering into the City contract.

(ii) **Model Card Check Agreement.** To facilitate the requirements imposed by this Section, the City's Mayor or the Mayor's designee may provide a model recommended card check agreement that includes the mandatory terms identified in Section 23.51(1) and which provides the maximum protection against labor/management conflict arising out of an organizing drive, and make such model recommended agreement available to parties required to enter into such agreement. The City may also prepare guidelines establishing standards and procedures related to this Article. Notwithstanding this provision regarding the preparation of a model card check agreement or related guidelines, this Article shall be self-executing, and shall apply in all circumstances and to the extent provided in this Article, in the absence of or regardless of such model card check agreement or guidelines.

(iii) **Requests for Proposals ("RFPs").** Any commission, department, authority or officer of the City which issues a request for proposals or invitation to bid or similar document regarding development of City Real Property which could result in a proposal contemplating operation of a hotel or restaurant project after the effective date of this ordinance, must include in such document a summary description of and reference to the policy and requirements of this Article. Failure to include description or reference to this Article in an RFP or similar document shall not exempt any developer, manager/operator or employer otherwise subject to the requirements of this Article.

(c) **Applicability of This Article.** The policy and obligations established above shall apply to particular developers, manager/operators and employers whenever the City has a proprietary interest in a hotel or restaurant project, except as otherwise provided hereunder. The determination whether or not the City has a proprietary interest in a hotel or restaurant project, and if so, whether an exemption applies under Section 23.53(b), shall be made on a case-by-case basis by the Mayor or the Mayor's designee by applying the standards and principles described herein and any further standards and principles provided in guidelines distributed pursuant to Section 23.52(b)(3)(ii) hereof. Any party otherwise subject to the terms of this Article because the City has a proprietary interest in a hotel or restaurant project defined in Section 23.51(10)(i)—(iii) above that claims an exemption from the terms of this Article under Section 23.53 below shall have the burden of demonstrating that the basis for such exemption is clearly present. (Formerly Sec. 23.33; added by Ord. 6-98, App. 1/16/98; amended by Ord. 108-99, File No. 990298, App. 5/7/99; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.53. SCOPE AND EXEMPTIONS.

(a) **Scope.** The requirements of this Article apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor

organization to be represented. Accordingly, this Article does not apply to the process of collective bargaining in the event a labor organization has been recognized as the bargaining representative for employees of employers subject to this Article. Moreover, nothing in the Article requires an employer or other entity subject to this Article to recognize a particular labor organization; nor does any provision of this Article require that a collective bargaining agreement be entered into with any labor organization, or that an employer submit to arbitration regarding the terms of a collective bargaining agreement.

(b) **Exemptions.** The requirements of this Article shall not apply to:

(1) Employers employing fewer than the equivalent of 50 full-time or part-time employees, provided that:

(i) When a restaurant is located on the same premises as a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this ordinance;

(ii) All employees employed in all restaurants which operate under the jurisdictional control of the San Francisco Airport Commission and which are owned, operate or managed by the same owner, operator or manager shall be aggregated for purposes of determining the applicability of this Ordinance; or

(2) Employers commencing operation in a hotel or restaurant in a hotel or restaurant project before the effective date of this Ordinance, or a hotel or restaurant project under any subcontract or City contract entered into before the effective date of this ordinance ("pre-existing agreement"). This exemption applies to an Employer and to his or her family for the duration of such Pre-Existing Agreement, unless it is amended during its term resulting in a Substantial Amendment, as defined in Section 23.51(13). This exemption shall apply beyond the expiration of the Pre-Existing Agreement if it is renewed or extended without a change in ownership of the Employer, and without changes resulting in Substantial Amendment, as defined in Section

23.51(13). For purposes of this exemption, "change in ownership" shall mean a change in ownership, from the effective date hereof, of 25% or more, unless such change is among members of the same family; or

(3) Any employer which is signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that hotel or restaurant project, or which has entered into a card check agreement with a labor organization regarding such employees which agreement provides at least equal protection from labor/management conflict as provided by the minimum terms provided in Section 23.51(1); or

(4) Any hotel or restaurant project where the Mayor or the Mayor's designee determines that the risk to the City's financial or other nonregulatory interest resulting from labor/management conflict is so minimal or speculative as not to warrant concern for the City's investment or other nonregulatory interest; or

(5) Any hotel or restaurant project where the developer, manager/operator or employer, is an agency of the federal government or a state-wide agency or entity ("public agency") and that public agency would prohibit application of this Article; or

(6) Any hotel or restaurant project where the requirements of this Article would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency related to such hotel or restaurant project, or any related rules or regulations. (Formerly Sec. 23.34; added by Ord. 6-98, App. 1/16/98; amended by Ord. 108-99, File No. 990298, App. 5/7/99; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.54. ENFORCEMENT.

(a) The requirement that employers enter into and comply with card check agreements with labor organizations in the circumstances provided in this Article, and the requirement that developers and manager/operators contractually obligate their successors, assigns or subcontractors to be bound by that former require-

ment are essential consideration for the City's agreement to any City contract containing that requirement.

(b) The City shall investigate complaints that this Article has been violated or that a card check provision included in a City contract or subcontract pursuant to this Article has been breached, and may take any action necessary to enforce compliance, including but not limited to instituting a civil action for an injunction and/or specific performance.

(c) In the event the City brings a civil enforcement action for violation of this Article, any taxpayer or any person or association by or with a direct interest in compliance with this Article may join in that enforcement action as a real party in interest. In the event the City declines to institute a civil enforcement action for violation of this Article, a taxpayer or directly interested person or association may bring a civil proceeding on its own behalf and on behalf of the City against that employer and seek all remedies available for violation of this Article and/or breach of a card check agreement required by this Article available under state law, including but not limited to monetary, injunctive and declaratory relief. In view of the difficulty of determining actual damages incurred by such a violation, liquidated damages may be awarded at the rate of \$1,000 per day of violation, to be distributed equally between a private plaintiff, if any, and the general fund of the City, unless such liquidated damages award is found to be so excessive in relation to the violator's resources as to constitute a penalty.

(d) Any action challenging the applicability of this Article to a particular employer may be brought only after first seeking an exemption pursuant to Section 23.53, and must be commenced within 60 days after notification that such exemption has been denied by the City.

(e) Notwithstanding anything else contained herein, in no event shall the remedy for a breach of the terms of this Article include termination of any such subcontract or City contract, nor shall any such breach defeat or render invalid or affect in any manner whatsoever the status or priority

of the lien of any mortgage, deed of trust or other security interest made for value and encumbering any Real Property affected by such subcontract or City contract, including, without limitation, any leasehold estate or other interest in such Real Property or improvements on such Real Property. (Formerly Sec. 23.35; added by Ord. 6-98, App. 1/16/98; amended and renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

SEC. 23.55. EFFECTIVE DATE AND APPLICATION.

This Ordinance shall become effective 30 days after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any Pre-Existing Agreement to which the City is a party, unless such Pre-Existing Agreement has been Substantially Amended after the effective date of this Ordinance. (Formerly Sec. 23.36; added by Ord. 108-99, File No. 990298, App. 5/7/99; renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

Editor's Note:

Ord. 108-99, File No. 990298, App. 5/7/99, which explicitly added this section to this article, amended Sections 23.51, 23.52, and 23.53 of this article.

SEC. 23.56. SEVERABILITY.

If any part or provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of this Ordinance, including the application of such part or provisions to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable. (Formerly Sec. 23.37; added by Ord. 108-99, File No. 990298, App. 5/7/99; renumbered by Ord. 15-01, File No. 001965, App. 2/2/2001)

Editor's Note:

Ord. 108-99, File No. 990298, App. 5/7/99, which explicitly added this section to this article, amended Sections 23.51, 23.52, and 23.53 of this article.

San Francisco - Administrative Code

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CHAPTER 23A: SURPLUS CITY PROPERTY ORDINANCE

- Sec. 23A.1. Title.
- Sec. 23A.2. Findings.
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- Sec. 23A.10. Board of Supervisors Review and Criteria.
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SEC. 23A.1. TITLE.

This ordinance may be cited as the "Surplus City Property Ordinance." (Added by Ord. 227-02, File No. 011498, App. 11/26/2002)

SEC. 23A.2. FINDINGS.

The Board of Supervisors of the City and County of San Francisco hereby finds:

(a) Homelessness in San Francisco is a crisis. The Mayor's Offices of Community Development and Housing estimate that there are 3,125 homeless families and 9,375 homeless individuals in San Francisco.

(b) The main causes of homelessness are high cost of living, lack of affordable housing units, welfare reform, de-institutionalization of the mentally ill, substance abuse and San Francisco's unique place as a destination point.

These causes are identified by the Mayor's Offices of Community Development and Housing in the 2000 Consolidated Plan.

(c) For homeless individuals and families, there is an unmet need of 3,187 housing slots for individuals and 2,025 slots for families.

(d) Surplus City property could be utilized to provide housing to homeless men, women and children.

(e) Surplus City property that is unsuitable for housing could be sold to generate income for permanent housing for people who are homeless.

(f) San Francisco's housing stock is unaffordable for many residents. The average rent for a two-bedroom apartment increased by 110% from 1980 to 1990, while the overall cost of living increased by 64%. At \$1,940, the average two-bedroom unit is out of reach to households earning less than \$77,600 per year, based on the Department of Housing and Urban Development's standards.

(g) San Francisco is experiencing a severe shortage of housing resulting in a negligible vacancy rate for habitable housing for persons earning less than half of the area median income.

(h) Many renters are unable to locate rental housing of any kind. These persons are increasingly seeking shelter in already overcrowded emergency shelters and, when such shelters are full, finding themselves on the City's streets.

(i) Existing rental housing constitutes much of the remaining affordable housing in the City. The number of such units is diminishing as a result of increased pressures for more development both downtown and in many neighborhoods.

(j) Frequently, real estate speculation results in the premature closure of existing habitable buildings and the withdrawal of existing

rental units from the market long before such closure would be needed for any physical redevelopment of such sites.

(k) The Board of Supervisors and the Mayor have concurred with the findings of the City's Health Commission that there exists a health and housing emergency, as enumerated in Board Resolution 537-01, adopted by the Board of Supervisors on June 25, 2001 and approved by the Mayor on July 6, 2001.

(l) Under the City's Charter, a number of City Commissions and Departments, including the Port, the Airport, the Public Utilities Commission, the Municipal Transportation Agency, the Recreation and Parks Commission and the Fine Arts Museums Board of Trustees have jurisdiction and control of their respective Property, and, thus, the provisions of this Chapter regarding declaring Property surplus or conveying Property shall operate only as recommendations of policy to such departments and Commissions.

(m) State law includes a number of statutes that potentially govern the disposition of surplus City Property, including Government Code Section 54220 et seq. (the "State Surplus Property Statute"). Under the State Surplus Property Statute, State agencies and subdivisions of the State, including cities or counties, disposing of surplus real property must first send a written offer to sell surplus property to and negotiate in good faith the conveyance of such surplus property with certain local agencies designated by the State for affordable housing, recreation, open space and school purposes. Any conveyances of Surplus Property under this Chapter would be subject to and would first need to comply with applicable State law, including the State Surplus Property Statute, and the application of the State Surplus Property Statute may preclude or impair disposing of Surplus Property for the purposes and in the manner set forth in this Chapter. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002)

SEC. 23A.3. PURPOSE.

The purpose of this ordinance is to:

(a) Identify and use surplus City-owned property for the purpose of providing housing, shelter, and other services for people who are homeless;

(b) Help relieve the crisis of homelessness in the City and County of San Francisco;

(c) Provide low or no cost facilities for agencies serving homeless people;

(d) Provide "sweat-equity" opportunities for homeless people to create permanent housing opportunities through rehabilitation and repair of the units;

(e) Create a centralized mechanism to responsibly dispose of surplus City property in a manner that will help ensure that the property or its proceeds will be used for purposes consistent with this Chapter. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002)

SEC. 23A.4. DEFINITIONS.

For purposes of this section:

(a) "Administrator" shall mean the City Administrator as set forth in Section 3.104 of the City's Charter.

(b) "Citizens' Advisory Committee" shall mean the group of citizens appointed pursuant to Section 23A.9.

(c) "Enterprise Departments" shall mean the following City departments: the Port, the Airport, the Public Utilities Commission, the Municipal Transportation Agency, the Recreation and Parks Commission and the Fine Arts Museums Board of Trustees.

(d) "Executive Director" shall mean the Executive Director of the Mayor's Office of Housing.

(e) "Homeless" shall mean:

1. an individual or family who lacks a fixed, regular and adequate nighttime residence; or

2. an individual or family who has a primary nighttime residence that is:

A. a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or

B. an institution that provides a temporary residence for individuals who have been institutionalized; or

C. a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(f) "Property" shall mean any real property owned by the City and County of San Francisco, excluding land and buildings reserved for open space or parks purposes, or any land dedicated for public right-of-way purposes, or any land used or reserved for transit lines, or public utility rights-of-way, or any publicly dedicated streets or rights-of-way. "Property" shall not include any real property owned by or on behalf of the San Francisco Unified School District.

(g) "Surplus Property" shall mean any Property that is not required to fulfill the mission of the City department, commission or agency with jurisdiction or control of such Property or that is not required to fulfill the mission of another governmental agency pursuant to an inter-governmental transfer;

(h) "Underutilized Property" shall mean an entire Property or portion thereof, with or without improvements, that is used by the City only at irregular periods of time or intermittently, or that is used by the City for current purposes that can be satisfied with only a portion of such Property, or that is not currently occupied or used by the City and for which there are no plans by the City to occupy or use such Property within the next fiscal year. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002; amended by Ord. 93-04, File No. 040537, App. 5/27/2004)

SEC. 23A.5. AGENCY REVIEW OF PROPERTY.

By April 1st of each year, each City Commission, department or agency shall compile and deliver to the Administrator a list of all Property that it occupies or is otherwise under its control. The list shall include at least the following:

(a) The street address of the Property (if there is one), and the Assessor's block and lot number;

(b) A general description of the Property, including the current use of the Property or any planned use of the Property within the next fiscal year;

(c) A general description of any structure(s) on the Property as well as an assessment of their physical condition;

(d) Whether the Property is now vacant or scheduled or anticipated to be vacant within the next fiscal year;

(e) If the Property is vacant or contains vacant structures, whether the Commission, department or agency deems the Property to be "Surplus," or "Underutilized" as defined in this Section; and

(f) A general summary of the terms and conditions of any gift, trust, deed restriction, bond covenant or other covenants or restrictions, deed of trust, lease, license, easement, use agreement or other agreement applicable to the use or disposition of such Property.

Each City department or agency shall maintain or shall work with the Administrator to maintain adequate inventory and accountability systems for the Property under its control to determine which Properties are Surplus or Underutilized for purposes of this Chapter, and shall reasonably cooperate with requests for information from the Administrator. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002)

SEC. 23A.6. COMPILATION OF INFORMATION BY ADMINISTRATOR.

The Administrator shall review the list of Property submitted by City departments pursuant to Section 23A.5 above and shall strike from this initial list any Property that is under the jurisdiction of the Recreation and Park Department, is part of the public right-of-way, or is subject to deed restrictions or other legal restrictions that would prevent the City from disposing of such Property pursuant to this Chapter. The Administrator shall further consult with other City Departments, Mayor, members of the Board of Supervisors and the Citizens' Advisory Committee to identify any Property listed on the initial list for which a City Department other

than the Department with current jurisdiction has a specific operational need and shall remove such Properties from the Surplus Property Report. The Administrator shall thereafter initiate the transfer of jurisdiction over those identified Properties to the Departments that can utilize them. The Administrator shall state in writing the reasons for the removal of each Property from the initial list and shall provide such report to the Mayor's Office of Housing, the Board of Supervisors, and the Citizens Advisory Committee. By June 1st of each year, the Administrator shall compile a comprehensive report for the remaining Property listed that includes, at a minimum, the following information: the street address, if any, and the block and lot number for each Property; the City Department with jurisdiction over each Property; a description of the zoning applicable to and surrounding such Properties; a plat map for each Property; the area in square footage for each Property; a description of the surrounding properties and neighborhood; any limitations on the development of the Property; and pictures of the Property (the "Surplus Property Report"). The Surplus Property Report shall also include a list of any and all City-owned properties that are adjacent to each listed Property and appear to be vacant or underutilized, along with the identification of the City Department with jurisdiction over such adjacent property. No later than June 30th of each year, the Administrator shall transmit the completed Surplus Property Report to the Mayor's Office of Housing and to the Board of Supervisors. The Administrator shall maintain and release written records of all information compiled under this Chapter in conformance with all state and local laws governing the retention and disclosure of public records. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002; amended by Ord. 93-04, File No. 040537, App. 5/27/2004)

SEC. 23A.7. TRANSFER OF JURISDICTION OVER SURPLUS PROPERTIES TO THE MAYOR'S OFFICE OF HOUSING.

By July 15th of each year, the Administrator, working with the Executive Director and City

Attorney's Office, shall submit to the Mayor and Board of Supervisors legislation transferring jurisdiction over the Properties, save and except for those Properties that are under the jurisdiction of Enterprise Departments, on the Surplus Property Report completed in accord with Section 23A.6 above to the Mayor's Office of Housing ("MOH") for the purpose of MOH's assessment of each Surplus Property for development as affordable housing consistent with this Chapter.

For those Properties transferred to MOH that MOH does not deem suitable for such development, the Executive Director shall notify the Administrator, who shall prepare and submit to the Mayor and Board of Supervisors legislation either transferring jurisdiction over such Properties from MOH to another City Department for such department's use or seeking to sell such properties, as determined by the Administrator. It shall be City policy to encourage the sale of such Surplus Property in accordance with the requirements of Administrative Code Section 23.3 and other applicable laws and to designate use of the net proceeds of such sales for the purpose of financing affordable housing in San Francisco.

For those Surplus Properties MOH deems suitable for such development, the Executive Director shall publicize the availability of the Surplus Properties and seek applications for development of the Properties as described further in Section 23.A8 below. The Executive Director also shall take all steps necessary to comply with the State Surplus Property Statute. With respect to Surplus Property under the jurisdiction of Enterprise Departments, the Board of Supervisors may, by separate legislation, urge the Commissions or Boards of such Enterprise Departments to consider approving a transfer of jurisdiction over the Properties to MOH for uses consistent with this Chapter. In the event any Commissions or Boards of Enterprise Departments take such action, the Administrator shall then prepare and submit to the Mayor and Board of Supervisors the appropriate legislation to transfer jurisdiction over that Enterprise Department's Surplus Property. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002; amended by Ord. 93-04, File No. 040537, App. 5/27/2004)

SEC. 23A.8. DEVELOPMENT OF PROPERTY.

(a) The Executive Director shall solicit applications from non-profit agencies serving the Homeless to lease or acquire Property that is listed as Surplus or Underutilized in any Surplus Property Report for use to assist the Homeless in accordance with the priorities set forth below in Section 23A.10(i) and (ii). The Executive Director shall require that all applications describe in detail (i) the type of conveyance the applicant seeks (i.e., a lease for a specific term or transfer of fee title) and the legal consideration, if any, the applicant proposes to pay for such conveyance, (ii) the intended use of the Property, including how it relates to the priorities of uses set forth in Section 23A.10 below; (iii) a specific plan and schedule for the development or improvement of the Property, including compliance with all applicable federal, state and local laws, including, without limitation, laws regarding disabled access, health, building and safety codes, and environmental compliance with the California Environmental Quality Act (CEQA), California Public Resources Code Sections 21000 et seq., and San Francisco Administrative Code Chapter 31; and (iv) a plan to secure adequate financial resources to develop, improve, insure, manage and maintain the Property. The Executive Director shall make available to all interested non-profit agencies contact information: (a) identifying any independent organizations working on behalf of homeless people that can assist homeless service providers in resolving any problems that may arise in the application processes; and (b) City staff persons who are available to assist in the application process. The Executive Director shall require submission of applications by September 30th of each year, but may, in its sole discretion, grant extensions of the deadline, provided in no event shall such extensions exceed thirty (30) days.

(b) Upon receipt of all applications for development of housing or other on-site services for the Homeless, the Executive Director shall work with the City Attorney's Office to prepare legislation containing the Executive Director's recommendations as to the terms of disposition and

development of each Surplus Property for submission for the Board of Supervisors' approval in accord with the policies and procedures set forth in this Chapter. The Clerk of the Board of Supervisors shall calendar a hearing before a committee of the Board of Supervisors no later than January 30 of each year to review the status of applications and the recommendations of the Surplus Property Citizens' Advisory Committee made pursuant to Section 23A.9(c) below.

(c) In the event the Executive Director does not receive any acceptable applications for certain of the Surplus Properties for development of housing or other on-site services for the Homeless, then the Executive Director may solicit applications from developers for the development of affordable housing other than solely housing for the Homeless, provided that the Executive Director first obtains the agreement of the Surplus Property Citizens' Advisory Committee that such solicitation of applications is warranted. The Executive Director shall require that any proposed affordable housing development under this subsection (c) shall serve persons earning no more than 60% of the Area Median Income for the San Francisco PMSA and, in preparing recommendations as to the applications received, shall give priority to projects that include the highest percentage of extremely low-income persons.

(d) Upon receipt of all applications for development of affordable housing, the Executive Director shall work with the City Attorney's Office to prepare legislation containing the Executive Director's recommendations as to the terms of disposition and development of each Surplus Property for submission for the Board of Supervisor's approval in accord with the policies and procedures set forth in this Chapter.

(e) If, after solicitation of applications pursuant to both subsections (a) and (c), the Executive Director determines that further efforts to solicit applications would likely be futile, the Executive Director shall notify the Administrator, who shall prepare and submit to the Mayor and Board of Supervisors legislation either transferring jurisdiction over such Properties from

MOH to another City Department for such department's use or seeking to sell such properties, as determined by the Administrator. It shall be City policy to encourage the sale of such Surplus Property in accordance with the requirements of Administrative Code 23.3 and other applicable laws and to designate use of the net proceeds of such sales for the purpose of financing affordable housing in San Francisco. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002; amended by Ord. 93-04, File No. 040537, App. 5/27/2004)

SEC. 23A.9. SURPLUS PROPERTY CITIZENS' ADVISORY COMMITTEE.

(a) There shall be a Surplus Property Citizens' Advisory Committee composed of 13 members appointed as follows:

(1) One member with expertise in the area of developing permanent housing for Homeless people and those at risk of homelessness, appointed by the Board of Supervisors.

(2) One member with experience in providing supportive services to help individuals and families exit homelessness, appointed by the Board of Supervisors.

(3) One member who holds a Real Estate and/or Broker's license, appointed by the Board of Supervisors.

(4) One member who is currently or formerly homeless, appointed by the Board of Supervisors.

(5) One member who is currently or formerly homeless with their family or is an advocate or service provider for homeless families, appointed by the Board of Supervisors.

(6) One member who is a member of a union, appointed by the Board of Supervisors.

(7) One member who has expertise with disability community issues, appointed by the Board of Supervisors.

(8) One member who is a homeless senior citizen or is an advocate or service provider for homeless senior citizens, appointed by the Board of Supervisors.

(9) One representative from the Mayor's Office of Housing.

(10) One member who advocates on behalf of open space and/or neighborhood parks, appointed directly by the Mayor, without confirmation by the Board of Supervisors.

(11) One member who broadly represents the interests of San Francisco's neighborhoods, appointed directly by the Mayor, without confirmation by the Board of Supervisors.

(12) The Mayor's Budget Director or his or her designee.

(13) The Chair of the Board of Supervisors Finance and Audits Committee or his or her designee.

(b) The Board and Mayor shall attempt through their appointments to ensure the broadest possible representation from the different geographic areas of the City and County of San Francisco.

(c) The Surplus Property Citizens' Advisory Committee shall comply with all applicable public records and meetings laws and shall be subject to the Conflict of Interest provisions of the City's Charter and Administrative Code. The Surplus Property Citizens' Advisory Committee shall review each Surplus Property Report and any applications for such Surplus or Underutilized Property submitted to the Executive Director under Section 23A.8 above. Based on such review and testimony from such public hearings as the Surplus Property Citizens' Advisory Committee may hold, by December 15th of each year, the Surplus Property Citizens' Advisory Committee shall make written recommendations to the Board of Supervisors as to (i) Property that was not listed by the City as Surplus or Underutilized Property, but which should be so listed in the next year's Surplus Property Report, (ii) which Property included in that year's Surplus Property Report as Surplus or Underutilized Property is suitable for disposition for the purpose of directly assisting people who are homeless, (iii) which applications for use of such Surplus or Underutilized Property should be granted, and (iv) which Property should be disposed of for other uses, but the proceeds of which should be used in accord with the policy set forth in Section 23A.10 below.

(d) This subsection (d) shall not apply to the representative from the Mayor's Office of Housing, the Mayor's Budget Director or his or her designee or the Chair of the Board of Supervisors Finance and Audits Committee or his or her designee. The remaining ten members of the Surplus Property Citizens' Advisory Committee shall be appointed for a term of two years; provided, however, that the ten members first appointed shall, by lot at the first meeting, classify their terms so that five shall serve for a term of one year and five shall serve for a term of two years. (Added by Ord. 93-04, File No. 040537, App. 5/27/2004; amended by Ord. 291-04, File No. 041316, App. 12/14/2004)

SEC. 23A.10. BOARD OF SUPERVISORS REVIEW AND CRITERIA.

The Board of Supervisors shall be guided by the following policy regarding the disposition of Surplus and Underutilized Property, which policy shall be the official policy of the City. This policy applies to Surplus and Underutilized Property regardless of whether such Property has been included on an annual Surplus Property Report.

Subject to any disposition priority required by State law and other limitations expressly set forth herein, Surplus and Underutilized Property shall be used in the following order of priority:

- (i) First, for the development of affordable housing for people who are Homeless and persons earning less than 20% of the Area Median Income for the San Francisco PMSA as established by the United States Department of Housing and Urban Development and reported by the Mayor's Office of Housing. Provided that:
 1. The housing shall remain affordable for the useful life of the Property;
 2. Housing costs in such housing shall not exceed 30% of the resident's income;
 3. Projects in which people who are homeless rehabilitate and renovate property in exchange for their tenancy or "sweat equity" in the property shall be encouraged.
- (ii) Second, for other on-site services for people

who are Homeless or for non-profit agencies serving people who are Homeless, including not limited to job training, senior services, healthcare and childcare for people who are homeless.

- (iii) Third, for the development of affordable housing for persons earning no more than 60% of the Area Median Income for the San Francisco PMSA as established by the United States Department of Housing and Urban Development and reported by the Mayor's Office of Housing, provided that the housing shall remain affordable for the useful life of the Property.

When the Executive Director determines Surplus Property is unsuitable for the uses described in subsections (i), (ii), and (iii) above because it is unsafe, inconveniently located or located in an area inappropriate for housing, or otherwise cannot meet the purposes of this Chapter, or when the Executive Director receives no acceptable applications pursuant to Section 23A.8, it shall be City policy to encourage the sale of such Surplus Property in accordance with the requirements of Administrative Code Section 23.3 and other applicable laws and to designate use of the net proceeds of such sales and/or leases for the purpose of financing affordable housing in San Francisco that meets the criteria set forth in subsection (i) above. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002; amended by Ord. 93-04, File No. 040537, App. 5/27/2004; amended by Ord. 291-04, File No. 041316, App. 12/14/2004)

SEC. 23A.11. DISPOSITION AND UTILIZATION OF SURPLUS, UNDERUTILIZED AND UNUTILIZED PROPERTY.

(a) Subject to (i) the terms and conditions of any gift, trust, deed restriction, bond covenant or other covenants or restrictions, mortgage, deed of trust, lease, license, use agreement or other agreement applicable to such Property, (ii) state or federal laws related to the disposition of surplus City Property, including, without limitation, California Government Code Section 54220 et seq., and (iii) the jurisdictional authority over

City Property granted to certain Commissions under the City's Charter, including, without limitation, as set forth in Charter Sections 4.112, 4.113, 4.114, 4.115, 5.101, 8A.102, the Board of Supervisors may by resolution approve the dispositions recommended by the Executive Director in accordance with this Chapter or approve dispositions different from those recommended by the Executive Director. Upon approval of such a resolution, it shall be the duty of the Executive Director to take all steps necessary to implement the resolution.

(b) Any final declaration that Property is Surplus or Underutilized and any final conveyance of Property under this Chapter shall be in accordance with and subject to all applicable laws, including (i) the terms and conditions of any gift, trust, deed restriction, bond covenant or other covenants or restrictions, mortgage, deed of trust, lease, license, use agreement or other agreement applicable to such Property, (ii) state or federal laws related to the disposition of Surplus City Property, including, without limitation, Government Code Section 54220 et seq., (iii) the jurisdictional authority over City Property granted to certain Commissions under the City's Charter, including, without limitation, as set forth in Charter Sections 4.112, 4.113, 4.114., 4.115, 5.101, 8A.102, and (iv) the requirements set forth in Administrative Code Sec. 23.3 of further Board of Supervisors approval by resolution or ordinance of final transaction documents after the completion of all required environmental review under CEQA, provided, however, that the requirements set forth in Administrative Code Section 23.3 of sale by public auction or competitive bidding and a sales price of at least 100 percent of appraised fair market value shall not apply to dispositions pursuant to this Chapter. Any such duly approved conveyance may be at no cost or less than fair market value as a conveyance that furthers a proper public purpose.

(c) Any conveyance of Property at less than fair market value or for homeless uses under this section shall include covenants that require that the Property be used in conformance with this Chapter and prohibits any developer of Property

from reselling, transferring or subleasing Property at a profit, or such other "anti-speculation" requirements as the Executive Director may approve. In the case of home ownership development, the limited equity is subject to the Property remaining available to the Homeless population in the calculation of any resale price.

(d) Any City department other than an Enterprise Department wishing to dispose of Surplus or Underutilized Property under such department's jurisdiction in a manner other than pursuant to this Chapter, regardless of whether such Surplus or Underutilized Property is listed on the then current Surplus Property Report, shall notify the Administrator, the Executive Director and the Surplus Property Citizens' Advisory Committee prior to seeking any approvals of any proposed disposition. The notice shall include the same information about the Surplus or Underutilized Property required under Section 23A.5. The Administrator, the Executive Director and the Surplus Property Citizens' Advisory Committee shall review such information and, within 45 days after submission, make recommendations to the Board of Supervisors regarding the disposition of the Surplus or Underutilized Property and consistent with the policy set forth in Section 23A.10. The Board of Supervisors may by resolution approve a disposition consistent with such recommendations and this Chapter or approve a different disposition. Upon approval of such a resolution, it shall be the duty of the Administrator, the Executive Director and other City officials, as appropriate, to take all steps necessary to implement the resolution. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002; amended by Ord. 93-04, File No. 040537, App. 5/27/2004; Ord. 291-04, File No. 041316, App. 12/14/2004)

Sec. 23A.12. [Reserved]

SEC. 23A.13. GENERAL WELFARE.

In undertaking this Surplus City Property Program, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers, commissions, and em-

ployees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002)

SEC. 23A.14. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter 23A or any part thereof is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clause or phrases be declared unconstitutional or invalid or ineffective. (Added by Ord. 227-02, File No. 011498, App. 11/26/2002)

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CHAPTER 24: REDEVELOPMENT AGENCY

- Sec. 24.1. Created Under Provisions of State Law.
- Sec. 24.1-1. Increasing Number of Members to be Appointed to Redevelopment Agency.
- Sec. 24.2. Housing Authority to Conduct Survey Prior to Approval of Redevelopment Project.
- Sec. 24.3. Quarterly Reports of Redevelopment Agency.
- Sec. 24.4. Compensation of Members; Travel Expenses.
- Sec. 24.5. Recommendations of Planning Commission.
- Sec. 24.6. Standards as to Exercise of Rights in Redevelopment Projects Without Discrimination.
- Sec. 24.7. Relocation Appeals Board; Establishment; Composition; Appointment; Terms; Duties; Compensation.

SEC. 24.1. CREATED UNDER PROVISIONS OF STATE LAW.

There is need for a redevelopment agency, to be known as the Redevelopment Agency of the City and County, to function in the City and County under the provisions of Sections 33000 to 33954 of the State Health and Safety Code.

A redevelopment agency shall be created and constituted at the time and in the manner prescribed by Sections 33200 to 33237 of such code. (Res. No. 7779 (1939))

SEC. 24.1-1. INCREASING NUMBER OF MEMBERS TO BE APPOINTED TO REDEVELOPMENT AGENCY.

Notwithstanding the provisions of Section 24.1 of this Chapter, and pursuant to the provisions of Section 33110 of the Health and Safety Code of the State of California, the number of

members to be appointed to the Redevelopment Agency of the City and County of San Francisco is hereby increased to seven, one of whom shall be a woman. (Added by Ord. 35-76, App. 2/13/76)

SEC. 24.2. HOUSING AUTHORITY TO CONDUCT SURVEY PRIOR TO APPROVAL OF REDEVELOPMENT PROJECT.

The Board of Supervisors does hereby declare as its policy that it will withhold approval of any redevelopment project until such time as the housing authority conducts a survey as to the availability of rehousing facilities for persons of low income who will be displaced by such project, and submits to the Board of Supervisors for its consideration a report reflecting the results of such survey. (Res. No. 11571 (1939))

SEC. 24.3. QUARTERLY REPORTS OF REDEVELOPMENT AGENCY.

The Redevelopment Agency of the City and County shall file with the Board of Supervisors a detailed report of all its transactions, including a statement of all revenues and expenditures, at quarterly intervals. (Res. No. 10911 (1939))

SEC. 24.4. COMPENSATION OF MEMBERS; TRAVEL EXPENSES.

Subject to the budget and fiscal provisions of the Charter, the compensation of the appointive members of the Redevelopment Agency, exclusive of actual and necessary expenses, including traveling expenses, shall be \$25 per meeting for each meeting of the agency actually attended by the members; provided, that the aggregate amount paid to any one member shall not exceed \$1,250 per year, and the aggregate amount paid all the members shall not exceed \$6,250 per year. (Amended by Ord. 92-63, App. 4/23/63)

SEC. 24.5. RECOMMENDATIONS OF PLANNING COMMISSION.

The City Planning Commission shall furnish the following information to the Board of Supervisors at as early a date as possible:

(a) Recommendations as to area which should first be made subject of survey for the purpose of redevelopment.

(b) The amount of funds necessary to conduct such a survey. (Res. No. 5239 (1939))

SEC. 24.6. STANDARDS AS TO EXERCISE OF RIGHTS IN REDEVELOPMENT PROJECTS WITHOUT DISCRIMINATION.

(1) The Board of Supervisors declares as a matter of general policy that the right to buy, lease, sublease, use or occupy land in redevelopment projects without discrimination or segregation based upon race, color, creed, national origin, ancestry, age, sex, sexual orientation or disability should properly be considered in the nature of a civil right and that appropriate steps should be taken to safeguard and protect that right.

(2) The Board recommends that every tentative plan submitted by the Planning Commission and every redevelopment plan submitted by the Redevelopment Agency or any person, firm, association or corporation or any public or private agency qualified to do so for approval of the Board of Supervisors pursuant to the Community Redevelopment Act contain, in addition to the other requirements set forth in such act, adequate provisions precluding direct or indirect discrimination against or segregation of any person or group of persons on account of race, color, creed, national origin, ancestry, age, sex, sexual orientation or disability in connection with the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of land or of any interest therein within the redevelopment projects which is acquired or to be acquired by the Redevelopment Agency.

(3) The Board further recommends that each tentative plan and each redevelopment plan submitted to the Board of Supervisors for approval

shall require that express provisions be included in deeds, leases and contracts entered into by the Redevelopment Agency in substantially the following form:

(a) **In Deeds.** "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and this conveyance is made and accepted upon and subject to the following conditions:

"(1) That there shall be no discrimination against or segregation of any person or group of persons on account of race, creed, color, national origin, ancestry, age, sex, sexual orientation or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees in the premises herein conveyed.

"(2) The foregoing covenant shall run with the land and shall bind the grantee, his or her heirs, executors, administrators and assigns and all persons claiming under or through them.

"(3) In the event of any breach of the foregoing covenant by any party bound thereby, it shall be the duty of the Redevelopment Agency to endeavor immediately to remedy such breach by conference, conciliation and persuasion. In case of failure so to remedy such breach, or in advance thereof, if in the judgment of the Redevelopment Agency circumstances so warrant, the breach shall be enjoined or abated by appropriate proceedings brought by the Redevelopment Agency."

(b) **In Leases.** "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and this lease is made and accepted upon and subject to the following conditions:

"(1) That there shall be no discrimination against or segregation of any person or group of persons on account of race, creed, color, national origin, ancestry, age, sex, sexual orientation or disability in the lease, sublease, transfer, use,

occupancy, tenure or enjoyment of the premises herein leased, nor shall the lessee himself or herself or any person claiming under or through him or her establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees in the premises herein leased.

"(2) The foregoing covenant shall bind the lessee, his or her heirs, executors, administrators and assigns and all persons claiming under or through them.

"(3) Any breach of the foregoing covenant by any party bound thereby may be enjoined or abated by appropriate proceedings brought by the immediate lessor of the person committing such breach or, in the event of his or her failure to act, it shall be the duty of the Redevelopment Agency, as agent and on behalf of the immediate lessor, and the lessor does irrevocably appoint the Redevelopment Agency as his or her agent for this purpose, to endeavor immediately to remedy the breach by conference, conciliation and persuasion, or, in the event of failure so to remedy such breach, then the breach shall be enjoined or abated by appropriate proceedings brought by the Redevelopment Agency."

(c) In contracts entered into by the Redevelopment Agency relating to the sale, transfer, or lease of land or of any interest therein acquired by such agency within any redevelopment area or project, the foregoing provisions, in substantially the form set forth, shall be included, and the contracts shall further provide that the foregoing provisions shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties or other transferee under such instruments.

(4) The Board does further recommend that every tentative plan and every redevelopment plan which shall be submitted to the Board of Supervisors for approval shall declare it to be the duty of the Redevelopment Agency to exercise the rights, powers and privileges in respect to the prevention of discrimination and segregation granted by the tentative plan and redevelopment plan and by the clauses prohibiting discrimina-

tion and segregation required by such tentative plan and redevelopment plan to be inserted in deeds, leases and contracts relating to any interest in land which shall have been acquired by the Redevelopment Agency.

(5) This section must not be construed to preclude in any way the full and fair consideration according to law of any plans submitted in conformity with the Community Redevelopment Act. (Amended by Ord. 511-82, App. 10/14/82)

SEC. 24.7. RELOCATION APPEALS BOARD; ESTABLISHMENT; COMPOSITION; APPOINTMENT; TERMS; DUTIES; COMPENSATION.

There is hereby established, pursuant to the provisions of California Health and Safety Code Section 33417.5, a Relocation Appeals Board composed of five members appointed by the Mayor and approved by the Board of Supervisors. One of the members first appointed shall be designated to serve for a term of one year; two for two years; and two for three years from the date of appointment. Thereafter, members shall be appointed as aforesaid for a term of office of three years, except that all vacancies occurring during a term shall be filled for the unexpired term.

The Board shall promptly hear all complaints brought by residents of the various project areas relating to relocation and shall determine if the Redevelopment Agency has complied with the provisions of Chapter 4 of the California Health and Safety Code and, where applicable, federal regulations. The Board shall, after a public hearing, transmit its findings and recommendations to the Agency. The members of the Board shall serve without compensation; but each of the members shall be reimbursed for his or her necessary expenses incurred in performance of his or her duties but not to exceed \$15 per meeting and \$45 per month. (Added by Ord. 334-72, App. 11/14/72)

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**CHAPTER 24A: ADMINISTRATIVE STRUCTURE LOCAL
RENT SUPPLEMENT PROGRAM IN THE OFFICE OF MAYOR**

- Sec. 24A.01. Definitions.
- Sec. 24A.02. Allocation of Funds to Mayor.
- Sec. 24A.03. Authority of Mayor to Execute Contracts.
- Sec. 24A.04. Providing for Administration and Expenditures Relating Thereto.
- Sec. 24A.05. Scope of Rent Supplement Assistance.
- Sec. 24A.06. Projects Eligible for Benefits and Authority of Mayor to Contract.
- Sec. 24A.07. Eligible Housing Owner.
- Sec. 24A.08. Qualified Tenant.
- Sec. 24A.09. Certificate of Eligibility.
- Sec. 24A.10. Term of Contract.
- Sec. 24A.11. Maximum Payments Under Contract for Each Tenant.
- Sec. 24A.12. Time of Payment Under Contract.
- Sec. 24A.13. Recertification of Income Under Contract.
- Sec. 24A.14. Hardship Cases.
- Sec. 24A.15. Tenant Occupancy Limitations.
- Sec. 24A.16. Form of Lease.
- Sec. 24A.17. Housing Owner's Obligation Under Contract to Report Tenant Income Increase.
- Sec. 24A.18. Change in Tenant Income Status.
- Sec. 24A.19. Rules and Regulations by Mayor.
- Sec. 24A.20. Relationship to Other Relocation Laws and Regulations.
- Sec. 24A.21. Severability.

SEC. 24A.01. DEFINITIONS.

For the purposes of this Chapter, the following words and phrases are defined to mean and include:

(a) "City" means City and County of San Francisco.

(b) "Mayor" means the Mayor of the City and County of San Francisco or a designee empowered to exercise any of the functions of the Mayor under this Chapter.

(c) "Owner" means the owner or lessee or designated operator of real property containing standard housing located within the City and County of San Francisco.

(d) "Dilapidated housing" means a housing unit that does not provide safe and adequate shelter; and in its present condition endangers the health, safety or well-being of the occupants. Such a housing unit shall have one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. Such defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(e) "Displaced by governmental action" means an individual or household, moved or to be moved from real property occupied as a dwelling unit as a result of activities in connection with a public improvement or development program carried on by an agency of the United States or any state or local governmental body or agency.

(f) "Household" means two or more persons who occupy the same dwelling unit and share income and common living expenses.

(g) "Disabled" means an individual who has a disability which:

(1) Is expected to be of long continued and indefinite duration;

(2) Substantially impedes his or her ability to live independently; and

(3) Is of such nature that his or her ability to live independently could be improved by more suitable housing conditions.

(h) "Substandard housing" means a unit which is either dilapidated as defined in Paragraph (d) of this Section, or does not have one of the following plumbing facilities:

(1) Hot and cold piped water inside the unit;

(2) Usable flush toilet inside the structure for the exclusive use of the occupants of the unit; or

(3) Usable bathtub or shower inside the structure for the exclusive use of the occupants of the unit.

(i) "Elderly" means an individual 62 years of age or over.

(j) "HUD" means the United States Department of Housing and Urban Development. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.02. ALLOCATION OF FUNDS TO MAYOR.

Pursuant to Section 515.01(b)(3) of San Francisco Business and Tax Regulation Code Article 7 ("Tax on Transient Occupancy of Hotel Rooms"), a portion of hotel tax revenues collected by the City are allocated to the Office of the Mayor for the local rent supplement program as provided in this Chapter. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.03. AUTHORITY OF MAYOR TO EXECUTE CONTRACTS.

The Mayor is hereby authorized to contract with eligible housing owners to make local rent supplement payments. The Mayor is further authorized to lease and sublet properties, including individual standard dwelling units, for utilization therein of local rent supplements and to enter into leases with the San Francisco Redevelopment Agency or City sponsored nonprofit corporations, which lease may contain a provision that the monthly rental payments not be in amounts and for a time period less than the

owner's debt service obligation against that property. The Mayor may engage in these transactions in order to comply with federal or state relocation requirements, or in order to comply with any court order regarding relocation requirements, or as otherwise allowed by law. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.04. PROVIDING FOR ADMINISTRATION AND EXPENDITURES RELATING THERETO.

The cost of administration of the allocation set aside pursuant to Section 515.01(b)(3)(E) of San Francisco Business and Tax Regulation Code Article 7 ("Tax on Transient Occupancy of Hotel Rooms") shall not exceed 8 percent. (Amended by Ord. 303-80, App. 6/27/80; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.05. SCOPE OF RENT SUPPLEMENT ASSISTANCE.

The Mayor may enter into a rent supplement contract with a qualified owner of multifamily housing projects for payment of a portion of the rent on behalf of qualified tenants. The conditions of eligibility for such a contract and its terms are specified in this Chapter. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.06. PROJECTS ELIGIBLE FOR BENEFITS AND AUTHORITY OF MAYOR TO CONTRACT.

(a) Rent supplement payments shall be available for furnished and unfurnished 0-bedroom (studio) and 1-bedroom units renting for moderate amounts in connection with multifamily projects which involve:

(1) New construction;

(2) Rehabilitation of existing structures;

(3) Existing standard dwelling units when utilized with respect to relocations of eligible tenants; and

(4) The creation of standard units in structures previously containing substandard units.

(b) The Mayor is authorized to make rent supplement payments with respect to projects in which dwelling units do not contain kitchen facilities.

(c) The Mayor is authorized to make rent supplement payments with respect to projects containing furnished dwelling units.

(d) The Mayor is authorized to make rent supplement payments with respect to dwelling units concurrently receiving federal rent supplements under the United States Housing Act of 1937 (42 U.S.C. §§ 1437 et seq.). (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.07. ELIGIBLE HOUSING OWNER.

To be eligible to receive rent supplement payments, the owner of the multifamily project may be a nonprofit, limited distribution, or a profit motivated entity. The project may be financed by, but not limited to, one of the following ways:

(a) By a mortgage under any section of the United States Housing Act.

(b) By federal, state or local assistance through tax exemptions or credits if the project is approved by the Mayor for receiving rent supplement payments. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.08. QUALIFIED TENANT.

(a) The benefits of the rent supplement payments are available only to an individual or a household renting a dwelling unit in a project owned by an eligible housing owner. To qualify for such benefits, the individual or household shall meet the following requirements:

(1) Have an annual income below the maximum amount established by the Mayor, which amount shall not be higher than the maximum income for low-income households as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, adjusted for household size.

(2) Have assets not exceeding \$5,000 in a case involving an elderly individual or a household whose head or spouse is elderly; or, have assets not exceeding \$2,000 in a case involving other than the elderly; and,

(3) Be one of the following:

(A) An individual or household displaced by governmental action; or,

(B) An individual who is 62 years of age or over; or disabled; or,

(C) An head of a household who is or whose spouse is 62 years of age or over, or who is disabled; or,

(D) An occupant of substandard housing.

(b) For the purpose of this Section, income shall mean total annual income consistent with policies and procedures utilized by HUD in administering the federal rent supplement program in San Francisco pursuant to Section 8 of the United States Housing Act of 1937 (or pursuant to any successor program). Total annual income shall mean total gross income, before taxes and other deductions, received by all members of the tenant's household. In determining gross income, there shall be included all wages, social security payments, retirement benefits, military and veteran's disability payments, unemployment benefits, welfare benefits, interest and dividend payments, and such other income items defined as total annual income by HUD for its rent supplement program (see, Title 24 Code of Federal Regulations, Sections 5601 et seq.).

(c) In computing household income for the purpose of this Section, the following shall be observed:

(1) Any earnings of a household member less than 18 years of age shall be excluded in computing the household income.

(2) The Mayor may allow special deductions from total gross income to take into account expenses incurred as a result of disability or continuing illness, the cost of necessary child care while a wage earner of the household is at work, and such other deductions as he or she considers appropriate.

(d) For the purpose of this Section, first priority for occupancy in a rent supplemented unit shall be granted to qualified displacees from the Yerba Buena Center Redevelopment Project, provided they make timely application. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.09. CERTIFICATE OF ELIGIBILITY.

Upon request of a housing owner, the Mayor will review for eligibility the application by a prospective tenant for rent supplement payments. If the application meets the requirements of this chapter, the Mayor shall issue a certificate of eligibility. The certificate shall state the amount of rent supplement to be paid monthly by the City to the housing owner on behalf of the qualified tenant. The payment shown in the certificate shall not, regardless of the tenant's household income, exceed 70 percent of the approved rent for the unit. No certificate of eligibility shall be issued where the amount of rent supplement payment would be less than 10 percent of such approved rent. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.10. TERM OF CONTRACT.

The rent supplement contract shall be limited to not more than 10 years from the date of the first payment made under the contract, except as may otherwise be required by court order. The contract may be renewed subject to the continued eligibility of the project and owner. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.11. MAXIMUM PAYMENTS UNDER CONTRACT FOR EACH TENANT.

The rent supplement contract shall provide that the payment on behalf of a qualified tenant shall be the difference between the rent approved by the Mayor for the unit and the greater of: (a) 30 percent of the tenant's household's income; or (b) any welfare allowance for housing if such allowance is larger than 30 percent of the

tenant's household's income; or (c) the sum of 30 percent of the tenant's household's income, plus any relocation assistance allowance due him or her for housing. When such tenant's relocation assistance benefits expire, he or she shall be assured a local rent supplement so long as he or she meets all income and other eligibility criteria. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.12. TIME OF PAYMENT UNDER CONTRACT.

The rent supplement contract shall provide for payments to be made monthly to the housing owner on behalf of qualified tenants in the amounts set forth in the certificates of eligibility. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.13. RECERTIFICATION OF INCOME UNDER CONTRACT.

The rent supplement contract shall provide that a recertification of income shall be obtained by the housing owner each year from the date the original certificate of eligibility was issued. Provision shall be included for adjusting payments to reflect income changes shown by the recertification. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.14. HARDSHIP CASES.

Where a tenant's household income has decreased due to illness, loss of job, or other hardship beyond his or her control, the Mayor may grant a temporary increase in rent supplement payments. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.15. TENANT OCCUPANCY LIMITATIONS.

Qualified tenants shall not be permitted to occupy units larger than the Mayor determines necessary for their needs. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.16. FORM OF LEASE.

(a) **Lease form.** Qualified tenants shall be required to execute a lease in a form approved by the Mayor.

(b) **Special lease provisions.** The lease shall contain the following special provisions:

(1) A provision obligating the tenant to report immediately to the housing owner any increase in household income which results in a monthly income 30 percent of which is greater than the full monthly rental for the housing unit.

(2) A provision obligating the tenant to reimburse the Mayor for any rent supplement payments made by the Mayor during a period when the tenant's household income had increased to a point where rent supplement payments should have been terminated but were not terminated because of the tenant's failure to report the increase to the housing owner. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

**SEC. 24A.17. HOUSING OWNER'S
OBLIGATION UNDER CONTRACT TO
REPORT TENANT INCOME INCREASE.**

(a) The rent supplement contract shall contain a provision obligating the housing owner to immediately notify the Mayor upon receiving a report from a tenant of an increase in the tenant's household income, resulting in a monthly income 30 percent of which is greater than the full monthly rental for the housing unit. The contract shall also obligate the housing owner, upon failing to notify the Mayor when a report of such increase in income is received from a tenant, to reimburse the Mayor for any rent supplement payments made during the period when the tenant is receiving the increased income.

(b) In selecting qualified tenants to occupy a local rent supplement unit, the owner shall agree to grant a first priority for occupancy to households displaced by the Yerba Buena Center Redevelopment Project, provided such potential tenants make timely application for admission. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

**SEC. 24A.18. CHANGE IN TENANT
INCOME STATUS.**

Appropriate adjustments shall be made in rent supplement payments to reflect household income changes shown by the annual tenant income recertification. Rent supplement payments shall be discontinued when it is determined that 30 percent of the tenant's household income is sufficient to pay the full amount of the rent for the unit occupied by the tenant. Where a tenant is no longer entitled to rent supplement payments, he or she may continue to occupy the unit provided he or she pays the full amount of the rent. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

**SEC. 24A.19. RULES AND
REGULATIONS BY MAYOR.**

The Mayor is hereby authorized to adopt rules and regulations supplemental to this Chapter and not in conflict therewith, said rules and regulations to become effective 10 days after the Mayor causes their publication in a newspaper of general circulation within the City and County of San Francisco. (Added by Ord. 290-72, App. 10/10/72; amended by Ord. 243-00, File No. 001309, App. 10/27/2000)

**SEC. 24A.20. RELATIONSHIP TO OTHER
RELOCATION LAWS AND REGULATIONS.**

This Chapter is intended to implement and supplement certain provisions of the California Relocation Assistance Act and its accompanying regulations (California Government Code Sections 7262, et seq.; and, California Code of Regulations Title 25 Sections 6000, et seq.); and certain provisions of the related Federal Uniform Relocation Assistance Act and its accompanying regulations (42 U.S.C. Sections 4600, et seq.; and, 49 CFR 24, et seq.), subject to the following:

(a) In the event any provision of this Chapter conflicts with any provision of the applicable State or Federal statutory or regulatory provisions, those State or Federal statutes or regulatory provisions shall apply.

(b) Where the provisions of this Chapter provide non-conflicting but different or additional rights, responsibilities, or benefits, the provisions of this Chapter shall prevail.

(c) Where a person or household is eligible for rights, responsibilities, or benefits pursuant to Court order(s) of the United States District Court, Northern District of California, in Case No. C-69 324 SAW (*Tenants and Owners in Opposition to Redevelopment ["TOOR"], et al. v. United States Department of Housing and Urban Development, and the San Francisco Redevelopment Agency*), including the Agreement between the parties originally dated May 15, 1973 and amended from time to time, said person or household may alternatively utilize the provisions of that order. (Also see, 406 F. Supp. 1024 and 406 F. Supp. 1060.) (Added by Ord. 243-00, File No. 001309, App. 10/27/2000)

SEC. 24A.21. SEVERABILITY.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter or any part thereof is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more section, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective. (Added by Ord. 290-72, App. 10/10/72)

CHAPTER 24B: RELOCATION APPEALS BOARD

- Sec. 24B.1. Establishment; Appointment; Terms; Staff; Funding.
- Sec. 24B.2. Scope of Ordinance.
- Sec. 24B.3. Time and Place of Meeting.
- Sec. 24B.4. Notice of Meeting.
- Sec. 24B.5. Quorum.
- Sec. 24B.6. Powers and Duties.
- Sec. 24B.7. Adjustment and Settlement of Complaints.
- Sec. 24B.8. Individual Remedies.
- Sec. 24B.9. Repeal.
- Sec. 24B.10. Public Meetings.
- Sec. 24B.11. Severability.

SEC. 24B.1. ESTABLISHMENT; APPOINTMENT; TERMS; STAFF; FUNDING.

(a) There is hereby established a board to be known as the San Francisco Relocation Appeals Board (hereinafter called "Board") consisting of five members, to be appointed by the Mayor and subject to the approval of the Board of Supervisors.

(b) One of the members who is first appointed shall be designated to serve for a term of one year; two for two years; and two for three years from the date of their appointments. Thereafter, members shall be appointed as aforesaid for a term of office of three years, except that all of the vacancies occurring during a term shall be filled for the unexpired term. A member shall hold office until a successor has been appointed.

(c) The Board shall elect a president from among its members. The term of office as President of the Board shall be for the calendar year or for the portion thereof remaining after each such president is elected.

(d) The Mayor shall be responsible for assigning a member of his office or any office under his jurisdiction the position of Executive Secre-

tary to the Board. All other staff personnel of the Board shall be under the immediate direction and supervision of the Executive Secretary.

(e) The Board of Supervisors shall provide funds to pay for staff personnel, services and facilities as may be reasonably necessary to enable the Board to exercise its powers and perform its duties under this ordinance.

(f) The members of the Board shall serve without compensation; but each of the members shall be reimbursed for necessary expenses incurred in performance of duties, but not to exceed \$15 per meeting and \$45 per month. (Added by Ord. 333-72, App. 11/14/72; amended by Ord. 25-00, File No. 992320, App. 2/25/2000)

SEC. 24B.2. SCOPE OF ORDINANCE.

This ordinance applies to appeals taken regarding individuals or families who are being, or have been, forced to relocate their homes or businesses by public action within the City and County of San Francisco by the City and County or any agency of the City and County of San Francisco. Nothing in this ordinance, however, shall be interpreted or applied so as to create any power or duty in conflict with the pre-emptive effect of any federal or State law. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.3. TIME AND PLACE OF MEETING.

The Board shall meet at least once a month if there is business pending before the Board. The time and place of meetings shall be determined by rules adopted by the Board. (Added by Ord. 333-72, App. 11/14/72; amended by Ord. 25-00, File No. 992320, App. 2/25/2000)

SEC. 24B.4. NOTICE OF MEETING.

The members shall be notified of the time and place of meeting not less than 24 hours prior to said meeting. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.5. QUORUM.

A quorum shall consist of a simple majority of the total Board members. No action may be taken by the Board at any meeting attended by less than the quorum. A decision by the Board shall require a simple majority of those members attending a meeting or hearing. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.6. POWERS AND DUTIES.

In addition to the other powers and duties set forth in this ordinance, the Board shall have the power to:

(a) Study, investigate and hold hearings on grievances and disputes arising between displacing agency or any agency responsible for providing relocation services, and a relocatee who is dissatisfied with the relocation services;

(b) Require agencies to investigate grievances upon request of the Board and submit reports of investigations to the Board;

(c) Mediate disputes between displacing agency or agency responsible for providing relocation services and aggrieved party when requested to do so by aggrieved party; and

(d) Issue rules and regulations for the conduct of its own affairs. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.7. ADJUSTMENT AND SETTLEMENT OF COMPLAINTS.

(a) Upon the filing with the Board of a signed complaint, specifying the nature of the grievance, the displacing agency and/or agency responsible for providing relocation services and the address to which notices may be sent, the Secretary shall notify said agency or agencies of the complaint and request said agency or agencies to submit a report to the Board within 15 days. An additional 15-day period may be granted by the Executive Secretary or President if necessary for the agency to complete its report. The Executive Secretary may attempt to resolve the complaint by conference, conciliation, persuasion or other means, shall maintain records of such attempts and shall submit such records and reports to the Board in accordance with said

Board's wishes. If the aggrieved party is dissatisfied with any solution proposed by the Secretary, said party may request in writing that the matter be heard by the Board forthwith. Thereupon the Secretary shall set the matter for hearing by the Board and in writing notify the aggrieved party and the agency or agencies involved of the time and place of said hearing.

(b) Following the Secretary's investigation, provided attempts to resolve the complaint are unsuccessful, the complainant and agencies involved shall be notified of the time and place of hearing by mail. The date fixed for the hearing shall be not less than five days from the date of notice thereof. The hearing shall be informal and the complainant shall be entitled to bring counsel, witness and documentation. The Board's decision will be based on the complainant and any related evidence presented.

(c) If the Board determines that the complaint is unjustified or unsubstantiated, or that there is insufficient or inadequate basis for the complaint, the complaint shall be dismissed and the complainant shall be notified of this action by certified mail. Such notice shall also report the reasons for the dismissal.

(d) Where the Board determines that the complaint is well founded, the Board shall notify the displacing agency of its decision and make recommendation for the settlement of the dispute, giving the reasons therefor. The displacing agency or agency responsible for providing relocation services shall comply with the recommendation to the maximum extent permitted by law and governmental regulations. The complainant will be notified of the decision of the Board. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.8. INDIVIDUAL REMEDIES.

Nothing in this ordinance or provisions thereof shall be construed as granting to an aggrieved party any right to pursue a civil action against the City and County of San Francisco or officer, employee, agency or representative thereof. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.9. REPEAL.

Any ordinance or part of any ordinance conflicting with the provisions of this ordinance hereby is repealed to the extent of such conflict. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.10. PUBLIC MEETINGS.

All meetings of the Board shall be public. (Added by Ord. 333-72, App. 11/14/72)

SEC. 24B.11. SEVERABILITY.

If any part or provision of this ordinance, or application thereof, to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this ordinance are severable. (Added by Ord. 333-72, App. 11/14/72)

San Francisco - Administrative Code

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CHAPTER 25: STREET LIGHTING

- Sec. 25.1. Underground Street Lighting Facilities to be Shown on Plans, Etc., for New Streets, Subdivisions.
- Sec. 25.2. Inclusion of Street Lighting in Plans, Etc., for Street Openings and Improvements.
- Sec. 25.3. Cost of Underground Facilities in New Streets and New Subdivisions.
- Sec. 25.4. Cost of Facilities in Work Done by City for Street Improvements.
- Sec. 25.5. When Facilities Become City and County Property.
- Sec. 25.6. Utilities Commission to Determine Street Lighting Specifications.

SEC. 25.1. UNDERGROUND STREET LIGHTING FACILITIES TO BE SHOWN ON PLANS, ETC., FOR NEW STREETS, SUBDIVISIONS.

The Director of Public Works shall require that underground street lighting facilities, including standards, all associated wires, cables, conduits, junction boxes, services, and all connections therewith satisfactory to the Public Utilities Commission, be included in all plans, maps, plats and specifications, for the opening of new streets, tracts, districts or subdivisions, except when arrangements have been made by the Public Utilities Commission for installation of adequate overhead street lighting facilities on utility poles. (Ord. No. 168-58, Sec. 1)

SEC. 25.2. INCLUSION OF STREET LIGHTING IN PLANS, ETC., FOR STREET OPENINGS AND IMPROVEMENTS.

The Director of Public Works shall include provision for street lighting in a manner satisfactory to the Public Utilities Commission in all

plans, maps, plats and specifications for street openings and improvements made by the City and County. (Bill No. 395, Ord. No. 15.0611(C.S.), Sec. 2)

SEC. 25.3. COST OF UNDERGROUND FACILITIES IN NEW STREETS AND NEW SUBDIVISIONS.

The cost of underground street lighting facilities in new streets or new subdivisions shall be borne by the person, assessment district or others paying for the grading, paving, sidewalks and other construction necessary to open the street. (Ord. No. 168-58, Sec. 1)

SEC. 25.4. COST OF FACILITIES IN WORK DONE BY CITY FOR STREET IMPROVEMENTS.

Money to cover the cost of street lighting facilities associated with work being done by the City and County shall be included in the fund provided for the street improvement. (Bill No. 395, Ord. No. 15.0611(C.S.), Sec. 4)

SEC. 25.5. WHEN FACILITIES BECOME CITY AND COUNTY PROPERTY.

All underground street lighting facilities, including but not limited to street lighting standards and all associated wires, cables, conduits, junction boxes, services and all connections therewith, in new streets, tracts or subdivisions opened by individuals, firms, corporations or assessment districts, shall become the property of the City and County on final completion and acceptance of the work. (Ord. No. 168-58, Sec. 1)

**SEC. 25.6. UTILITIES COMMISSION TO
DETERMINE STREET LIGHTING
SPECIFICATIONS.**

The Public Utilities Commission shall determine the intensity of illumination, number and spacing of lighting facilities and other details necessary to secure satisfactory street lighting. (Ord. No. 9046 (1939), Sec. 14)

CHAPTER 26. DEEMED APPROVED OFF-STREET ALCOHOL USE NUISANCE REGULATIONS

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| Sec. 26.1. | Findings. | Sec. 26.18. | Form of Notice for Administrative Hearings and Appeals. |
| Sec. 26.2. | Deemed Approved Off-Sale Alcohol Use Nuisance Regulations. | Sec. 26.19. | Conduct of Hearings. |
| Sec. 26.3. | Definitions. | Sec. 26.20. | Purpose of the Administrative Hearing. |
| Sec. 26.4. | Automatic Deemed Approved Status. | Sec. 26.21. | Administrative Penalties. |
| Sec. 26.5. | Status of New Off-Sale Alcohol Uses. | Sec. 26.22. | Method and Form of Decision of the Hearing Officer. |
| Sec. 26.6. | Previously Non-Conforming Off-Sale Alcohol Uses. | Sec. 26.23. | Procedure for Consideration of Violations to Conditions Imposed on Deemed Approved Off-Sale Alcohol Uses. |
| Sec. 26.7. | Abandonment. | Sec. 26.24. | Appeal to the Board of Appeals or Board of Supervisors. |
| Sec. 26.8. | Deemed Approved Off-Sale Alcohol Uses in Existing Special Use or R Restricted Use Districts. | Sec. 26.25. | Illegal Use. |
| Sec. 26.9. | Notification to Owners of Deemed Approved Off-Sale Alcohol Uses. | Sec. 26.26. | Fee. |
| Sec. 26.10. | Education and Outreach to Deemed Approved Off-Sale Alcohol Uses. | Sec. 26.27. | Deemed Approved Off-Sale Alcohol Use Continuing Project Account. |
| Sec. 26.11. | Informed Merchants Preventing Alcohol-Related Crimes and Tendencies—I.M.P.A.C.T. | Sec. 26.28. | Departmental Reporting Requirements. |
| Sec. 26.12. | Deemed Approved Performance Standards. | | |
| Sec. 26.13. | Violations of Deemed Approved Performance Standards. | | |
| Sec. 26.14. | Conditional Use Permits. | | |
| Sec. 26.15. | Operation of Administrative Hearings by the City Administrator. | | |
| Sec. 26.16. | Procedures for Conduct of Administrative Hearings and Appeals. | | |
| Sec. 26.17. | Notice of Administrative Hearings for Violations of Deemed Approved Performance Standards. | | |

SEC. 26.1. FINDINGS.

The Board hereby finds and declares as follows:

(1) San Francisco has the highest ratio of off-sale alcohol uses per capita in California, the great majority of which are liquor stores; and,

(2) Nuisance and criminal activities such as drug dealing, public drunkenness, loitering, and other behaviors that negatively impact neighborhoods occur with disproportionate frequency at and around the premises of off-sale alcohol uses; and,

(3) Neighborhood character can change over time and the careful regulation of nuisance activity by off-sale alcohol uses will help to ensure that such uses do not contribute to the deterioration of neighborhoods; and,

(4) Poorly regulated off-sale alcohol uses increase the availability of alcohol in the communities in which they are located, and studies have demonstrated a link between the availability of alcohol and numerous negative consequences, including violence, fatal traffic crashes, and nuisance law violations; and,

(5) Research published in the American Journal of Public Health found that communities and neighborhoods that have a high number of bars and liquor stores per capita experience more violent assaults; and,

(6) Researchers at Columbia University found that 25 to 40 percent of all patients in U.S. general hospital beds (not in maternity or intensive care) are being treated for complications of alcohol-related problems; and,

(7) The Center for Substance Abuse Prevention has determined that the three leading causes of death for teenagers are associated with alcohol use: car crashes, homicides, and suicides; and,

(8) A study conducted by the Youth Leadership Institute found that 50 percent of stores in the South of Market, Tenderloin, and Mission neighborhoods of the City are not in compliance with the State's "Lee Law" which requires that no more than 33 percent of a liquor store's windows and doors are to be covered with any kind of advertising; and,

(9) The City currently lacks a targeted administrative mechanism to enforce its existing Alcohol Restricted Use Districts in the Mission, Haight, Third Street, Divisadero, and North of Market neighborhoods, and to enforce its existing nuisance laws based on the past activities of off-sale uses on a store-by-store basis through the attachment of conditions, the imposition of administrative penalties, or the revocation of use permits; and,

(10) Educational campaigns directed at off-sale alcohol uses have been shown to improve their appearance, reduce nuisance activity, and benefit the local community; and

(11) Off-sale alcohol uses operating outside of the law negatively impact those uses operating within the law and as good neighbors; and

(12) The City recognizes its responsibility to enforce the law and the need for a partnership with off-sale alcohol uses and the City, including the Police Department and the City Attorney, to address illegal activities in proximity to an off-sale alcohol use. The City also recognizes that there are occasions when owners and employees of off-sale alcohol uses would fear for their personal safety in requesting that persons engaging in illegal activities cease those activities; and

(13) Good faith efforts on the part of the owners and employees of off-sale alcohol uses to address illegal activities in proximity to their stores, including: timely calls to the Police Department; the installation of lighting and security cameras; clear unobstructed windows; and clean sidewalks, among others, can reduce the nuisance impacts of such off-sale alcohol uses; and

(14) Given the successful implementation of similar programs in other California municipalities, the Youth Leadership Institute worked with the Board of Supervisors to develop legislation to help San Francisco to address nuisances associated with off-sale alcohol uses. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.2. DEEMED APPROVED OFF-SALE ALCOHOL USE NUISANCE REGULATIONS.

The provisions of Chapter 26 shall be known as the "Deemed Approved Off-Sale Alcohol Use Nuisance Regulations." The purpose of these regulations is to promote the public health, safety and general welfare by requiring that businesses that sell alcoholic beverages for off-site consumption and that were permitted, conditionally permitted, or nonconforming uses before the adoption of these regulations, or that are permitted or conditionally permitted by the City after the adoption of these regulations, comply with the Deemed Approved Performance Standards as specified in Section 26.12 in order to achieve the following objectives:

(1) To protect adjacent neighborhoods from the harmful effects of nuisance activities often attendant to the sale of alcoholic beverages for off-site consumption.

(2) To provide opportunities for businesses that sell alcoholic beverages for off-site consumption to operate in a mutually beneficial relationship to each other and to other commercial and civic services.

(3) To provide mechanisms to address nuisance problems often associated with the sale of alcoholic beverages, such as litter, graffiti, unruly behavior, and escalated noise levels.

(4) To ensure that businesses that sell alcoholic beverages for off-site consumption are not the source of undue public nuisances in the community.

(5) To ensure that sites where alcoholic beverages are sold for off-site consumption are properly maintained so that negative impacts generated by these activities are not harmful to the surrounding environment.

(6) To monitor off-sale alcohol uses to ensure that they do not substantially change their mode or character of operation. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.3. DEFINITIONS.

(a) **Alcoholic Beverage.** Alcoholic beverage shall mean alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine or beer, that contains one-half of one percent or more of alcohol by volume and that is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances, and the sale of which requires a State of California Department of Alcoholic Beverage Control License.

(b) **Off-Sale Alcohol Use.** Off-Sale Alcohol Use shall mean any retail use that sells beer, wine, or distilled spirits to a customer in a closed container for consumption off the premises and that has a State of California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) or type 21 (off-sale general).

(c) **Deemed Approved Off-Sale Alcohol Use.** Deemed Approved Off-Sale Alcohol Use shall mean a business or entity that uses a building, structure, or site, or portion thereof, for

the sale of alcoholic beverages for off-site consumption. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.4. AUTOMATIC DEEMED APPROVED STATUS.

All businesses or entities engaged in the sale of alcoholic beverages for off-site consumption that are operating as permitted, conditionally permitted, or nonconforming uses prior to the effective date of this ordinance are now automatically Deemed Approved Off-Sale Alcohol Uses. Each such Deemed Approved Off-Sale Alcohol Use shall retain this status as long as it continues to comply with the Deemed Approved Performance Standards as specified in Section 26.12. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.5. STATUS OF NEW OFF-SALE ALCOHOL USES.

After the effective date of this ordinance all new permitted Off-Sale Alcohol Uses shall also be subject to the Deemed Approved Performance Standards as specified in Section 26.12 and shall receive the same notices and be subject to the same administrative procedures, penalties and fees as those Deemed Approved Off-Sale Alcohol Uses that were operating as permitted, conditionally permitted, or nonconforming uses prior to the effective date of this ordinance. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.6. PREVIOUSLY NON-CONFORMING OFF-SALE ALCOHOL USES.

Any Deemed Approved Off-Sale Alcohol Use that was previously considered to be a non-conforming use shall continue to be subject to those provisions of the Planning Code that govern non-conforming uses to the extent those provisions do not conflict with the provisions of this Chapter. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.7. ABANDONMENT.

Whenever a Deemed Approved Off-Sale Alcohol Use ceases to be operated continuously, or

undergoes a substantial change in mode or character of operation, such Deemed Approved Off-Sale Alcohol Use shall not be resumed. A substantial change in the mode of character of operation shall not include:

(1) Changes in ownership or an owner-to-owner transfer of an Alcohol Beverage Control License.

(2) Re-establishment, restoration, or repair of an existing Off-Sale Alcohol Use on the same lot after total or partial destruction or damage due to fire, riot, insurrection, toxic accident or act of God.

(3) Temporary closure for not more than ninety (90) days for repair, renovation or remodeling, or in cases of vacation or illness. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.8. DEEMED APPROVED OFF-SALE ALCOHOL USES IN EXISTING SPECIAL USE OR RESTRICTED USE DISTRICTS.

Any Deemed Approved Off-Sale Alcohol Use operating in a zoning district of the City that further regulates off-sale alcohol uses shall continue to be subject to those regulations, where applicable, in addition to the regulations contained in this Chapter. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.9. NOTIFICATION TO OWNERS OF DEEMED APPROVED OFF-SALE ALCOHOL USES.

Within six months of the enactment of this legislation, and every year thereafter, the Police Department, in coordination with the Department of Public Health, shall notify the owner of each Deemed Approved Off-Sale Alcohol Use of the use's Deemed Approved status. Such notice shall be sent via U.S. mail and shall include a copy of the performance standards as specified in Section 26.12, notification that the Deemed Approved Off-Sale Alcohol Use is required to comply with the Deemed Approved Performance Standards, and notification that the Deemed Approved Off-Sale Alcohol Use is required to comply with all other provisions of the Deemed Approved

Off-Sale Alcohol Use Regulations. As long as service is made following these procedures failure of any person to receive notice given pursuant to this Section shall not affect the Deemed Approved status of the use.

The Police Department shall refer to the California Alcoholic Beverage Control Department's database of all active Type 20 and Type 21 Off Sale Retail Licenses in the City and County of San Francisco to determine the names and addresses of the operators of Deemed Approved Off-Sale Alcohol Uses. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.10. EDUCATION AND OUTREACH TO DEEMED APPROVED OFF-SALE ALCOHOL USES.

(a) Within six months of the enactment of this legislation, the Director of the Department of Public Health, or his or her designee, in cooperation with the Chief of the Police Department or his or her designee, shall develop and implement an education and outreach program to educate Deemed Approved Off-Sale Alcohol Uses about the steps each use may take to operate as a good neighbor in their communities, to avoid nuisance behaviors, and to abide by requirements of this Chapter. This education and outreach program shall be based upon a public health/environmental approach to the prevention of alcohol-related nuisances. The education and outreach program shall be directed to all Deemed Approved Off-Sale Alcohol Uses, relevant business associations, and residential and commercial property owners and tenants within one block of a Deemed Approved Off-Sale Alcohol Use.

(b) The education and outreach program shall include

(1) The development and distribution of informational packets on the requirements and benefits of this Chapter and of other educational materials, including, but not limited to, culturally and linguistically appropriate informational posters, brochures, and other materials for display at Deemed Approved Off-Sale Alcohol Uses.

(2) Commencing within six months of the enactment of this legislation, biennially the Department of Public Health shall provide educational sessions for operators of Deemed Approved Off-Sale Alcohol Uses at multiple locations throughout the City. Operators of Deemed Approved Off-Sale Alcohol Uses who do not attend at least one educational session every two years shall receive an educational site visit from the Department of Public Health. This visit should be coordinated with and, when possible, conducted with Police Department personnel.

(3) Coordination of community stakeholder meetings, which should include representatives from City departments, Deemed Approved Off-Sale Alcohol Uses, business associations, the Small Business Commission, the Youth Commission, neighborhood associations and community organizations.

(c) The Police Department, in cooperation with the Department of Public Health, may promulgate additional education, outreach, and administrative requirements for Deemed Approved Off-Sale Alcohol Uses as are necessary to ensure successful implementation of the Deemed Approved Off-Sale Alcohol Regulations. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.11. INFORMED MERCHANTS PREVENTING ALCOHOL-RELATED CRIMES AND TENDENCIES—I.M.P.A.C.T.

Any training conducted by the Police Department under the California Department of Alcoholic Beverage Control's IMPACT program should, whenever possible, incorporate the requirements of the Deemed Approved Performance Standards. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.12. DEEMED APPROVED PERFORMANCE STANDARDS.

A use shall retain its Deemed Approved status if it conforms to all of the following Deemed Approved Performance Standards (hereinafter the "Performance Standards"):

(a) The owner, its employees, or agents does not participate in, or assist persons participating in, illegal activities within the premises or within

the boundaries of the use's property line, including the sidewalk and areas between the use and the street, including, but not limited to, disturbance of the peace, illegal drug activity, illegal sale of firearms, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sale or receipt of stolen goods, or theft, assaults or batteries.

(b) It does not result in repeated nuisance activities within the premises or within the boundaries of the use's property line, including the sidewalk and areas between the use and the street, including, but not limited to, accumulation of litter graffiti unabated within three days, excessive loud noises (especially in the late night or early morning hours), or calls for service to the Police Department not initiated by the Deemed Approved Off-Sale Alcohol Use.

(c) In an administrative hearing pursuant to this Chapter the City shall have the burden of proof to establish that the owner, its employees, or agents has participated in, or assisted persons participating in, the illegal activities outlined in Subsection 26.12(a) and/or that the use has resulted in the nuisance activity outlined in Subsection 26.12(b).

(d) No more than 33 percent of the square footage of the windows and clear doors of an Deemed Approved Off-Sale Alcohol Use shall bear advertising or signs of any sort, and all advertising and signage shall be placed and maintained in a manner that ensures that Law Enforcement Personnel have a clear and unobstructed view of the interior of the premises, including the area in which the cash registers are maintained, from the exterior public sidewalk or entrance to the premises. This requirement shall not apply to premises where there are no windows or where existing windows are located at a height that precludes a view of the interior of the premises by a person standing outside the premises.

(e) For those Deemed Approved Off-Sale Alcohol Uses that are located within an existing Alcohol Use Restricted District as set forth in the

Planning Code, it does not result in the violation of any applicable restrictions imposed on off-sale alcohol uses in that district.

(f) It does not result in the violation of Health and Safety Code Section 11570, which makes every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance a nuisance that shall be enjoined and for which penalties may be recovered.

(g) It does not result in the violation of Penal Code Section 11200, which makes every building or place used for purpose of unlawfully selling, serving, or giving away any spirituous, vinous, malt or other alcoholic liquor, and every building or place in or upon which such liquors are unlawfully sold, served or given away, a nuisance that shall be enjoined, abated and prevented, whether it is a public or private nuisance.

(h) It does not result in violations of local, State, or Federal regulations, ordinances, or statutes.

A copy of these Performance Standards, provided by mail by the Police Department per Section 26.9, shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.13. VIOLATIONS OF DEEMED APPROVED PERFORMANCE STANDARDS.

If the City Attorney receives from the Director of the Planning Department, the Chief of Police, the Director of the Department of Public Health or the Director of the Department of Building Inspection, or the designee of any of these officials, a request to consider bringing an administrative hearing pursuant to Sections 26.14—26.23 or prosecuting a Deemed Approved Off-Sale Alcohol Use for violations of City, State and/or Federal laws for violations of the Performance Standards specified in Section 26.12, or for violations of any condition that has been placed on a Deemed Approved Off-Sale Alcohol Use under the provisions of Sections 26.20—

26.21, the City Attorney may determine that it is appropriate to file a civil action against the Deemed Approved Off-Sale Alcohol Use and/or may determine that it is appropriate to bring the Deemed Approved Off-Sale Alcohol Use to an administrative hearing. At the administrative hearing, the City Attorney may request that a decision be issued ordering that the violations of the Performance Standards be corrected, that a decision be issued imposing administrative penalties against the Deemed Approved Off-Sale Alcohol Use, and/or that a decision be issued imposing conditions on the continued operation of the Deemed Approved Off-Sale Alcohol Use.

In the event that the Deemed Approved Off-Sale Alcohol Use has, within the past three years, been the subject of an administrative hearing at which a finding of violation of the Performance Standards was made, at which conditions were imposed on the Deemed Approved Off-Sale Alcohol Uses' continued operations, and/or at which administrative penalties were imposed on the Deemed Approved Off-Sale Alcohol Use for violation of the Performance Standards, the City Attorney may request that an administrative hearing, as specified in Sections 26.15—26.23, be held to consider the revocation of the Deemed Approved Off-Sale Alcohol Use's Deemed Approved status and/or request additional penalties or conditions. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.14. CONDITIONAL USE PERMITS.

In the event that the City Attorney receives a request to consider bringing an administrative hearing pursuant to Sections 26.15—26.23, and determines that the alleged violations are violations of conditions imposed by the Planning Commission through the conditional use permitting process, the City Attorney shall refer its findings to the Planning Department for actions consistent with Planning Code Section 303. Notwithstanding the foregoing, any alleged violations that are not violations of conditions imposed by the Planning Commission through the conditional use permitting process shall be sub-

ject to the administrative hearing process in Sections 26.15—26.23. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.15. OPERATION OF ADMINISTRATIVE HEARINGS BY THE CITY ADMINISTRATOR.

The City Administrator shall conduct administrative hearings provided for in the Deemed Approved Off-Sale Alcohol Use Regulations. All requests to the City Administrator by the City Attorney to schedule an administrative hearing shall be accompanied by sufficient information to allow the City Administrator to complete the Notice For Administrative Hearings as described in Section 26.17. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.16. PROCEDURES FOR CONDUCT OF ADMINISTRATIVE HEARINGS AND APPEALS.

(a) The City Administrator shall appoint one or more neutral Hearing Officers to conduct administrative hearings. A neutral Hearing Officer shall be an impartial individual, without a vested interest in either the Deemed Approved Off-Sale Alcohol Use or a complainant against the Deemed Approved Off-Sale Alcohol Use, and may not be a current City employee. Notwithstanding the foregoing, a contracted Hearing Officer shall not be considered a City employee for the purposes of this Chapter. Within 10 days of receipt of a request from the City Attorney's office to conduct an administrative hearing, the City Administrator shall select a Hearing Officer to conduct the Administrative Hearing. The assigned Hearing Officer shall exercise all powers relating to the conduct of the administrative hearing unless or until the decision of the Hearing Officer is appealed to the Board of Appeals or the Board of Supervisors.

(b) A record of all administrative hearings shall be made by means of a permanent recording determined to be appropriate by the City Administrator or, in the case of appeals to the Board of Appeals, the Executive Director of the

Board of Appeals or, in the case of appeals to the Board of Supervisors, the Clerk of the Board of Supervisors.

(c) Any party may have the administrative hearing recorded by a certified court reporter at his or her own expense. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the fee required by the certified court reporter.

(d) The Hearing Officer, the Board of Appeals, or the Board of Supervisors may grant hearing continuances of up to 30 days for good cause shown.

(e) For the purposes of this Section, the term party or parties refers to the City and County of San Francisco and the owner of the Deemed Approved Off-Sale Alcohol Use. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.17. NOTICE OF ADMINISTRATIVE HEARINGS FOR VIOLATIONS OF DEEMED APPROVED PERFORMANCE STANDARDS.

Within 15 days of the receipt of a request from the City Attorney to conduct an administrative hearing, the City Administrator shall send a notice to the owner of the Deemed Approved Off-Sale Alcohol Use of the time and place of the administrative hearing for violation of the Deemed Approved Performance Standards. The hearing date shall be set at the Hearing Officer's sole discretion, except that the hearing must commence within 60 days of the date the City Attorney requests the administrative hearing. The Hearing Officer may extend that 60 days period by up to 30 days at his or her discretion or if the City Attorney or the owner of the Deemed Approved Off-Sale Alcohol Use requests, within 5 days of receipt of the Notice of Administrative Hearing, to submit briefing to the Hearing Officer on the alleged violations of the Performance Standards. In the event that briefing is requested, the Hearing Officer shall inform the parties of a briefing schedule that will allow the Hearing Officer sufficient time to consider the briefing prior to the administrative hearing.

Notice may be accomplished by personal service or by U.S. mail, or if both of these methods prove unsuccessful, then by posting the Notice of Administrative Hearing in a conspicuous place on the property. Notices shall include notification that conditions or administrative penalties may be imposed on the Deemed Approved Off-Sale Alcohol Use or that the Hearing Officer may consider revocation of the Deemed Approved status of the Off-Sale Alcohol Use. In addition, the City Administrator shall post the notice in accordance with those laws governing the noticing of meetings of policy bodies contained in Article II of Section 67 of the Administrative Code. As long as service has been made as set forth above, failure of any person or party to receive notice given pursuant to this Section shall not affect the validity of any proceedings hereunder. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.18. FORM OF NOTICE FOR ADMINISTRATIVE HEARINGS AND APPEALS.

The notice to the owner of the Deemed Approved Off-Sale Alcohol Use of the administrative hearing shall be substantially in the following form, but may include additional information:

"You are hereby notified that an administrative hearing will be held before the [name of the Hearing Officer] on the day of at the hour to determine whether, due to violations of the Performance Standards, conditions should be imposed on the Deemed Approved Off-Sale Alcohol Use status of the business operated at pursuant to the Deemed Approved Off-Sale Alcohol Use Regulations contained in the San Francisco Administrative Code, whether administrative penalties should be imposed, and/or whether the Deemed Approved Status of the Off-Sale Alcohol Use should be revoked. You may be present and give testimony at the hearing. You may be, but need not be, represented by counsel. In the event that you or the City Attorney requests to submit briefing prior to the administrative hearing, all parties will be notified of the briefing schedule set by, the Hearing Officer appointed in this matter."

A brief statement of the reason(s) for the hearing shall also be included with the notice, including a list of which Performance Standards the Deemed Approved Off-Sale Alcohol Use is considered to be violating. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.19. CONDUCT OF HEARINGS.

In conducting an administrative hearing the Hearing Officer may take into consideration the oral testimony, written submissions of the parties, and other forms of documentary information. The Hearing Officer is not bound by the formal rules of evidence governing court proceedings. The Hearing Officer may provide for sworn testimony, cross-examination, or other procedural adjustments for the administrative hearing as he or she determines is appropriate.

At any appeal from the decision of a Hearing Officer, the Board of Appeals, or the Board of Supervisors may take into consideration the oral testimony, written submissions of the parties and other forms of documentary information, the transcript of the administrative hearing, the written submissions made by the parties at the administrative hearing, the written decision of the Hearing Officer, an appeal letter setting forth those reasons why the appellant believes the Hearing Officer's decision is in error, and a written response to the appeal letter prepared by the respondents. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.20. PURPOSE OF THE ADMINISTRATIVE HEARING.

(a) The purpose of the administrative hearing is to receive information as to whether the Deemed Approved Off-Sale Alcohol Use is in compliance with the Performance Standards.

(b) The Hearing Officer shall determine whether the Deemed Approved Off-Sale Alcohol Use is in compliance with the Performance Standards. Based on this determination, the Hearing Officer may continue the Deemed Approved status for the use in question, may impose administrative penalties for violations of the Performance Standards, may impose such reasonable conditions as are in the judgment of the Hearing

Officer necessary to ensure compliance with the Performance Standards, and, in the event that the Deemed Approved Off-Sale Alcohol Use has within the past three years been the subject of an administrative hearing at which a finding of violation of the Performance Standards was made, may revoke the Deemed Approved Off-Sale Alcohol Use's Deemed Approved Status. If the Hearing Officer determines instead to impose further, new conditions on the Deemed Approved Off-Sale Alcohol Use, such conditions shall be based upon the information then before the Hearing Officer.

(c) In reaching a determination as to whether a use has violated the Performance Standards, or as to the appropriateness of imposing conditions on a use, revoking a use, assessing administrative penalties, or the amount of administrative penalties to assess, the Hearing Officer may consider:

(1) The length of time the Deemed Approved Off-Sale Alcohol Use has been out of compliance with the Performance Standard(s); and

(2) The impact of the violation of the Performance Standard(s) on the community; and

(3) Any information regarding the owner of the Deemed Approved Off-Sale Alcohol Use's efforts to remedy the violation of the Performance Standard.

(d) "Efforts to Remedy" shall include, but are not limited to:

(1) Timely calls to the Police Department that are placed by the owner of the Deemed Approved Off-Sale Alcohol Use, his employees, or agents.

(2) Requesting that those persons engaging in activities causing violations of the Performance Standards cease those activities, unless the owner of the Deemed Approved Off-Sale Alcohol Use, or his employees or agents feels that their personal safety would be threatened in making that request.

(3) Making improvements to the use's property or operations, including but not limited to the installation of lighting sufficient to illuminate the area within the use's property line, the

installation of security cameras, clear unobstructed windows, clean sidewalks, and graffiti abated within three days.

(e) The decision of the Hearing Officer shall be based upon all information received at the administrative hearing, including, but not limited to, information compiled by City staff, testimony from the owner of the Deemed Approved Off-Sale Alcohol Use, and the testimony of all other interested persons. Any conditions imposed by the Hearing Officer shall be a condition of the Deemed Approved Off-Sale Alcohol Use's continued operation. Any condition imposed by the Hearing Officer shall not be considered a suspension, revocation, or withdrawal of a Deemed Approved Off-Sale Alcohol Use's use permit.

(f) All determinations, decisions, and conditions made or imposed under this Chapter regarding the use of a Deemed Approved Off-Sale Alcohol Use shall run with the land; provided, however, that upon legal transfer of a use's State of California Department of Alcohol Beverage Control Board License, the fact that a use has been the subject of an administrative hearing at which a finding of violation of the Performance Standards was made may only be used as a basis for revoking the use's Deemed Approved Status within 18 months of the transfer or within three years of the prior administrative hearing, whichever is less. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.21. ADMINISTRATIVE PENALTIES.

The Hearing Officer may assess administrative penalties against the owner of the Deemed Approved Off-Sale Alcohol Use of no less than \$500.00 and no more than \$1,000.00 for each violation of a Performance Standard. If the violation is of a continuing nature, the Hearing Officer may impose a penalty for each day the violation remains.

If payment of any administrative penalty imposed by the Hearing Officer is not received by the City Administrator within the period of time set forth in the decision, and the decision has not been appealed under the time periods set forth in

Section 26.22, the City Administrator shall request that the Tax Collector pursue collection of the penalty and fee against the owner of the Deemed Approved Off-Sale Alcohol Use, up to and including imposition of a special assessment lien in accordance with the requirements of Article 26 of Chapter 10 of the San Francisco Administrative Code (commencing with Section 10.230). In the event that the unpaid administrative penalty is owed by an owner of a Deemed Approved Off-Sale Alcohol Use who is not also the property owner of the building in which the use is located, the City Administrator may request that the City Attorney pursue collection of the penalties.

Any administrative penalties collected under this Chapter shall be deposited in the Deemed Approved Off-Sale Alcohol Use Continuing Project Account, as set forth in Section 26.27. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.22. METHOD AND FORM OF DECISION OF THE HEARING OFFICER.

(a) The Hearing Officer shall, within a reasonable time not to exceed thirty 30 days from the date the hearing is closed, submit to the City Administrator a written decision containing a brief summary of the information considered and the Hearing Officer's findings and conclusions, including any conditions that are to be placed on the Deemed Approved Off-Sale Alcohol Use and any administrative penalties to be imposed. The Hearing Officer's written decision shall also inform the parties of their right to appeal the written decision and describe the appeal process. The Hearing Officer's written decision shall be a public record. The City Administrator shall serve a copy of the decision on each party by personal service or by U.S. mail. Service of the decision shall be deemed complete at the time it is personally served or deposited in the mail with the correct amount of postage affixed. Failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision. The City Administrator shall also provide a copy of the written decision to the Director of the Planning Department, the Chief of the Police Department, the Director of the Depart-

ment of Public Health, the Director of the Department of Building Inspection, and the Board of Supervisors.

(b) The decision of the Hearing Officer shall become final ten days after the service of the decision is deemed complete unless appealed to the Board of Appeals, or, in the case of a decision to revoke a Deemed Approved Off-Sale Alcohol Use that was permitted as a conditional use, to the Board of Supervisors, in accordance with Section 26.24. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.23. PROCEDURE FOR CONSIDERATION OF VIOLATIONS TO CONDITIONS IMPOSED ON DEEMED APPROVED OFF-SALE ALCOHOL USES.

In the event of a failure to comply with any prescribed condition imposed by the Hearing Officer or with any Performance Standard, at the request of the City Attorney, another administrative hearing may be set. Notification of this hearing shall be in accordance with Sections 26.17—26.18.

The purpose of this administrative hearing is to receive information and determine whether violations to any condition attached to the Deemed Approved Off-Sale Alcohol Use have occurred. The hearing shall be conducted as provided in Sections 26.15—26.22. The Hearing Officer may add to or amend the existing conditions based upon the information presented; may impose additional administrative penalties, or, alternatively, if the previous conditions were imposed within the three years prior to the City Attorney's request for an administrative hearing, may revoke the Deemed Approved Use's Deemed Approved status and/or impose administrative penalties. The provisions of Section 26.22 concerning the Hearing Officer's written decision shall be followed. The decisions of the Hearing Officer shall become final in the same manner as provided for in Section 26.22. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.24. APPEAL TO THE BOARD OF APPEALS OR BOARD OF SUPERVISORS.

A decision of a Hearing Officer, except a decision to revoke a Deemed Approved Off-Sale

Alcohol Use that was permitted as a conditional use, may be appealed to the Board of Appeals in the manner prescribed in Article I of the San Francisco Business and Tax Regulations Code. A decision of a Hearing Officer to revoke a Deemed Approved Off-Sale Alcohol Use that was permitted as a conditional use may be appealed to the Board of Supervisors in the manner prescribed in Section 303 of the Planning Code. An appeal shall stay the decision of the Hearing Officer. All appeals must be in writing and shall state specifically any claims that there was an error or abuse of discretion by the Hearing Officer or why the Hearing Officer's decision is not supported by information contained in the record. Notice to parties of the public hearing on the appeal shall be delivered personally, or served or deposited in the mail with the correct amount of postage affixed. As long as service has been made as set forth above, failure to receive notice given pursuant to this section shall not affect the validity of any appeal hearing hereunder.

The City Administrator shall forward a copy of the record before the Hearing Officer at the administrative hearing and a copy of the Hearing Officer's written decision to the Executive Secretary of the Board of Appeals or the Clerk of the Board of Supervisors at least 10 days before the date of the appeal hearing. If any party has obtained a certified transcript of the administrative hearing, that transcript may be submitted to the Executive Secretary of the Board of Appeals or to the Clerk of the Board of Supervisors by any party, no later than 10 days before the date of the appeal hearing, and shall be considered part of the record of the administrative hearing.

The Board of Appeals or Board of Supervisors shall determine whether the Deemed Approved Off-Sale Alcohol Use conforms to the applicable Performance Standards and/or any conditions that have in the past been imposed on the Deemed Approved Off-Sale Alcohol Use, and may continue or revoke a Deemed Approved use and/or may impose conditions on the Deemed Approved Off-Sale Alcohol Use as are, in its judgment, necessary to ensure conformity to the Performance Standards. The Board of Appeals or Board of Supervisors may also continue, reduce, re-

move, or increase any administrative penalties that have been assessed by the Hearing Officer. The Board of Appeals or Board of Supervisors may not remove administrative penalties unless it also makes a finding that the Deemed Approved Off-Sale Alcohol Use in question is not in violation of any Performance Standards. In the event that the Board of Appeals or Board of Supervisors determines that the administrative penalties shall be increased, such a determination shall be based on specific information and based on the same factors listed in Section 26.21.

The Board of Appeals or Board of Supervisors shall direct its staff to reduce their decision to writing within 10 days. The decision shall contain findings of fact, a determination of the issues presented, and any conditions to be imposed or administrative penalties to be paid. A copy of the decision shall be served on the parties by personal service or by U.S. mail. Service of this decision shall be deemed complete at the time it is personally served or deposited in the mail with the correct amount of postage affixed. As long as service has been made as set forth above, failure to receive a copy of the decision served pursuant to this section shall not affect the validity of the decision rendered herein.

A decision of the Board of Appeals or Board of Supervisors is final. The Board of Appeals or the Board of Supervisors written decision shall apprise parties of their right to seek judicial review in the Superior Court of San Francisco pursuant to Section 1094.6 of the California Code of Civil Procedure. Any condition imposed by the Board of Appeals or the Board of Supervisors shall not be considered a suspension, revocation or withdrawal of a Deemed Approved Off-Sale Alcohol Use's permit to operate. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.25. ILLEGAL USE.

A Deemed Approved Off-Sale Alcohol Use, that has been finally revoked shall lose its Deemed Approved Off-Sale Alcohol Use Status and shall no longer be considered a legal use of the building, structure, site, or portion thereof, and shall cease operation immediately. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.26. FEE.

The owner of the Deemed Approved Off-Sale Alcohol Use shall each be required to pay an annual fee of \$264.00 to cover the cost of administering the Deemed Approved Off-Sale Alcohol Use Education and Outreach Program and the cost of the City Attorney. This annual fee shall be billed by and paid to the Office of the Treasurer & Tax Collector, which shall deposit the monies collected in the Deemed Approved Off-Sale Alcohol Continuing Project Account, as set forth in Section 26.27. In the event that the owner of the Deemed Approved Off-Sale Alcohol Use fails to pay the fee during a given fiscal year, the Office of the Treasurer & Tax Collector shall notify the Department of Public Health, which may request that the City Attorney pursue collection of the penalties.

Beginning with fiscal year 2006-2007, the annual fee may be adjusted each year, without further action by the Board of Supervisors, to reflect changes in the relevant Consumer Price Index, as determined by the Controller. No later than April 15th of each year, the Department of Public Health shall submit the annual fee to the Controller, who shall apply the price index adjustment to produce a new annual fee for the following year. No later than May 15th of each year, the Controller shall file a report with the Board of Supervisors reporting the new annual fee and certifying that: (a) the annual fee produces sufficient revenue to support the proposed costs of providing the services in the upcoming fiscal year for which the annual fee is being charged and (b) the annual fee will not produce revenue that exceeds the proposed costs of providing the services in the upcoming fiscal year for which the annual fee is charged. Notwithstanding the procedures set forth in this Section, the Board of Supervisors, in its discretion, may modify the annual fee by ordinance at any time.

A new Deemed Approved Off-Sale Alcohol Use or a Deemed Approved Off-Sale Alcohol Use that undergoes a change in ownership after the enactment of the Deemed Approved Off-Sale Alcohol Use Ordinance shall pay its first annual fee within 60 days of commencing operation or of

the change in ownership. This first annual fee payment shall be pro-rated based of the number of days left in the fiscal year.

Upon the request of the owner of a Deemed Approved Off-Sale Alcohol Use, the Department of Public Health may waive payment of the annual fee provided that the owner can show to the satisfaction of the Department of Public Health all of the following:

(1) That the Deemed Approved Off-Sale Alcohol Use has been under the same ownership for not less than the previous three years;

(2) That the annual fee for the Deemed Approved Off-Sale Alcohol Use has been paid in a timely manner for not less than the previous three years; and

(3) That the Deemed Approved Off-Sale Alcohol Use has not been the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter.

If the owner of the Deemed Approved Off-Sale Alcohol Use can show all of the above, the Department of Public Health shall waive the fee indefinitely, provided, however, that if the Deemed Approved Off-Sale Alcohol Use changes ownership or becomes the subject of a City Department-referred complaint or any administrative penalties or conditions imposed by a Hearing Officer, the Board of Appeals, or the Board of Supervisors under the provisions of this Chapter the annual fee shall be immediately reimposed. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.27. DEEMED APPROVED OFF-SALE ALCOHOL USE CONTINUING PROJECT ACCOUNT.

(a) Annual fees and administrative penalties collected by the City pursuant to this Chapter shall be deposited in a Deemed Approved Off-Sale Alcohol Use Continuing Project Account within the City's General Fund (Continuing Projects Fund). The Deemed Approved Off-Sale Alcohol Use Continuing Project Account shall be administered by the Department of Public Health.

(b) Annual fees deposited in the Deemed Approved Off-Sale Alcohol Use Continuing Project Account are to be expended to cover the cost to the Department of Public Health of administering the Deemed Approved Off-Sale Alcohol Use Education and Outreach Program and the costs of the City Attorney as set forth in this Chapter.

(c) Administrative penalties deposited in the Deemed Approved Off-Sale Alcohol Use Continuing Project Account are to be expended to cover the cost of code enforcement efforts by the City Attorney, additional education and outreach by the Department of Public Health to Deemed Approved Off-Sale Alcohol Uses beyond that specifically provided by Section 26.10, and other activities consistent with the intent of this Chapter. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

SEC. 26.28. DEPARTMENTAL REPORTING REQUIREMENTS.

(a) Beginning 18 months after the effective date of this ordinance, and annually thereafter, the City Attorney and the Department of Public Health shall each submit a report to the Board of Supervisors on the actions it has taken to implement this Chapter. The appropriate committee of the Board of Supervisors shall hold a hearing to review the report and potential amendments to this Chapter, based upon recommendations of the report and public comment.

(b) Beginning 12 months after the effective date of this ordinance, and annually thereafter, the Police Department shall submit a report to the Board of Supervisors, with a copy to the San Francisco Public Library for public review, that lists all Deemed Approved Off-Sale Alcohol Uses and the conditions and/or penalties placed upon each use, including conditions or penalties imposed through; an administrative hearing under this Chapter; an action of the Board of Supervisors, Planning Commission, Board of Permit Appeals, or California Alcohol Beverage Control; the inclusion of the use in an Alcohol Restricted Use District; or any other method. (Added by Ord. 43-06, File No. 051792, App. 3/10/2006)

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CHAPTER 27: [RESERVED]

San Francisco - Administrative Code

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CHAPTER 28: ADMINISTRATIVE DEBARMENT PROCEDURE

- Sec. 28.0. Findings.
- Sec. 28.1. Definitions.
- Sec. 28.2. Debarment Authority.
- Sec. 28.3. Grounds for Debarment.
- Sec. 28.4. Initiating the Proceedings; Counts and Allegations.
- Sec. 28.5. Service of the Counts and Allegations.
- Sec. 28.6. Request for a Hearing.
- Sec. 28.7. Failure to Respond to the Counts and Allegations.
- Sec. 28.8. Appointment of the Hearing Officer.
- Sec. 28.9. Pre-Hearing Procedure.
- Sec. 28.10. Hearings and Determinations.
- Sec. 28.12. Term and Effect of Administrative Debarment; Violation of Order.
- Sec. 28.13. Publication and Reports of Debarment.

SEC. 28.0. FINDINGS.

The Board of Supervisors finds that contracting with the City and County of San Francisco is an important municipal affair, and that the award of contracts to contractors who fail to deal with the City and County in good faith compromises the integrity of the contracting process and results in the improper expenditure of public funds. The Board of Supervisors recognizes that the City and County must afford contractors due process in any determination that precludes any individual or business entity from participating in the contracting process. This Chapter does not apply to a determination of nonresponsibility for a single contract or identifiable group of contracts, but for the broader determination of irresponsibility of a contractor for the general purpose of contracting with the City and County of San Francisco for a specified period. The Board of Supervisors therefore adopts this Chapter 28

to prescribe standard procedures for the prosecution, determination and implementation of administrative debarments. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.1. DEFINITIONS.

The following definitions apply for only the purposes of this Chapter 28:

(A) **Affiliate.** Any individual person or business entity related to a contractor where such individual or business entity, directly or indirectly, controls or has the power to control the other, or where a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees or a business entity organized or following the suspension, debarment, bankruptcy, dissolution or reorganization of a person which has the same or similar management; and/or ownership or principal employee as the contractor.

(B) **Charging Official.** Any City department head or the President of any Board or Commission authorized to award or execute a contract under the San Francisco Charter or the Administrative Code, the Mayor, the Controller, the City Administrator, the Director of Administrative Services or the City Attorney. All charging officials are authorized to act on behalf of the City and County in prosecuting any administrative debarment proceeding and in issuing an Order of Debarment under this Chapter.

(C) **Contractor.** Any individual person or business entity who submits a qualification statement, proposal, bid or quote or who contracts directly or indirectly with the City and County of San Francisco for the purpose of providing any goods or services to or for the City and County of San Francisco including without limitation any contractor, subcontractor, consultant, subconsultant or supplier at any tier. The term "contractor"

shall include any responsible managing corporate officer who has personal involvement and/or responsibility in obtaining a contract with the City and County of San Francisco or in supervising and/or performing the work prescribed by the contract.

(D) **Debarment.** The administrative determination against a potential bidder, or contractor declaring such potential bidder or contractor irresponsible and disqualified from participating in the competitive process for contracts with the City and County of San Francisco or from entering into contracts, with the City and County of San Francisco for a period specified in the debarment order. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.2. DEBARMENT AUTHORITY.

Notwithstanding any other provision of the Administrative Code, any charging official shall have authority to issue Orders of Debarment against any contractor in accordance with the procedures set forth in this Chapter. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.3. GROUNDS FOR DEBARMENT.

A charging official shall issue an Order of Debarment for any contractor who the hearing officer, based on evidence presented, finds to have engaged in any willful misconduct with respect to any City bid, request for qualifications, request for proposals, purchase order and/or contract. Such willful misconduct may include, but need not be limited to the following: (a) submission of false information in response to an advertisement or invitation for bids or quotes, a request for qualifications or a request for proposals; (b) failure to comply with the terms of a contract or with provisions of this Administrative Code; (c) a pattern and practice of disregarding or repudiating terms or conditions of City contracts, including without limitation repeated unexcused delays and poor performance; (d) failure to abide by any rules and/or regulations adopted pursuant to the San Francisco Municipal Codes; (e) submission of false claims as defined in this Administrative Code, Chapter 6,

Article V; (f) a verdict, judgment, settlement, stipulation or plea agreement establishing the contractor's violation of any civil or criminal law against any government entity relevant to the contractor's ability or capacity honestly to perform under or comply with the terms and conditions of a City contract; and/or (g) collusion in obtaining award of any City contract, or payment or approval thereunder. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.4. INITIATING THE PROCEEDINGS; COUNTS AND ALLEGATIONS.

Any charging official may initiate an administrative debarment proceeding by issuing Counts and Allegations. A charging official may issue Counts and Allegations against any contractor relating to any matter consistent with the foregoing grounds for debarment. A charging official may issue Counts and Allegations regardless whether such charging official awarded, was responsible for or was involved in any way with the underlying contract or circumstances leading to the Counts and Allegations.

The charging official shall append to the Counts and Allegations a photocopy of this Chapter 28 of the Administrative Code. Failure to append this Chapter 28, however, shall not affect the force or validity of the Counts and Allegations. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.5. SERVICE OF THE COUNTS AND ALLEGATIONS.

The charging official shall serve the Counts and Allegations on each named individual person or business entity in a manner ensuring confirmation of delivery. For example, service may be achieved by United States Postal Service certified mail, return receipt requested or with other delivery confirmation, hand delivery (messenger service) or other commercial delivery service that provides written confirmation of delivery.

The charging official shall also serve the Counts and Allegations on the Controller and the City Attorney. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.6. REQUEST FOR A HEARING.

Within 15 days after receipt of the Counts and Allegations, the contractor may submit a written request for an administrative hearing. The contractor may make such request through counsel or other authorized representative. Any such request shall be filed with the Controller and copied to the charging official. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.7. FAILURE TO RESPOND TO THE COUNTS AND ALLEGATIONS.

Failure of the contractor to submit to the City a written request to be heard within the time required by this Chapter, or failure of the contractor or the contractor's representative to appear for a requested hearing that has been duly noticed, shall be deemed admission by the contractor to the Counts and Allegations. In accordance with the procedures set forth below, the charging official shall present evidence in support of the debarment to the appointed hearing officer and the hearing officer shall make a determination on such evidence. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.8. APPOINTMENT OF THE HEARING OFFICER.

A charging official shall request either the Controller or the Director of Administrative Services to appoint a hearing officer for any debarment proceeding. If either the Controller or the Director of Administrative Services is the charging official then he or she shall request the other to appoint the hearing officer. Within 15 days of the request, the Controller or the Director of Administrative Services shall appoint a hearing officer and notify the contractor and the charging official of the appointment. The notice of appointment shall include the name of the hearing officer. The contractor or the charging official may object to the appointed hearing officer within five business days of the notification. If the Controller or the Director of Administrative Services, at his/her sole discretion, appoints a new hearing officer, then he/she shall notify the contractor and the charging official as soon as prac-

ticable but not more than 15 days after receipt of the objection. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.9. PRE-HEARING PROCEDURE.

Within 15 calendar days of his/her appointment, the hearing officer shall notify each contractor named in the Counts and Allegations and the charging department of the scheduled hearing date. The hearing date shall be set at the hearing officer's sole discretion, except the hearing must commence within 120 days of the date the charging official served the Counts and Allegations. The hearing officer may extend the 120-day period only upon good cause shown; proceeding as expeditiously as possible is in the public's best interests.

Discovery pursuant to the California Code of Civil Procedure is not applicable to this administrative debarment procedure.

The hearing officer may, in his/her sole discretion, direct any named contractor and the charging official to submit in advance of the hearing, statements, legal analyses, lists of witnesses, exhibits, documents or any other information the hearing officer deems pertinent to the determination of willful misconduct. The hearing officer may request the respective parties to submit rebuttals to such information. The hearing officer may limit the length, scope or content of any such statement, analysis, list, rebuttal, document, or other requested information. The hearing officer shall set firm due dates for all written presentations.

If the hearing officer determines, with the written agreement of each named contractor and the charging official, that the hearing shall be by written presentation, all final writings shall be due no later than 120 days of the date the charging official served the Counts and Allegations. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.10. HEARINGS AND DETERMINATIONS.

Hearings may occur in person or in writing, as set forth in the foregoing Section 28.09. If the

hearing is to occur in person, the hearing officer shall specify the time and place for the charging official to present the case and for the contractor to rebut the charges. The hearing officer may, in his/her sole discretion, allow offers of proof, set time limitations and limit the scope of evidence presented based on relevancy. Each side shall be entitled to call witnesses, and the hearing officer may allow cross-examination of witnesses. The hearing officer may ask questions of any party for the purpose of reaching a determination.

The hearing officer shall consider the evidence submitted by the charging department and the contractor. Within 15 days of the hearing, or of the date final written presentations are due, the hearing officer shall issue his/her Findings and Recommendation. The hearing officer shall serve the Findings and Recommendation on the charging official, the named contractor(s), and/or their respective counsels or authorized representatives, and shall submit the same to the Controller.

If the hearing officer finds that the named contractor has committed willful misconduct as described in the foregoing Section 28.3 and recommends a term of debarment, the charging official shall issue an Order of Debarment consistent with the hearing officer's recommendation. The charging official shall serve the Order on each named contractor, his/her/their counsel or authorized representative, if any, the City Attorney, and the Controller. An Order of Debarment under this Chapter shall be the final administrative determination by the City in the matter. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.12. TERM AND EFFECT OF ADMINISTRATIVE DEBARMENT; VIOLATION OF ORDER.

An Order of Debarment shall provide for a term of debarment not to exceed five years from the date of the Order. The Order shall prohibit any named contractor and the contractor's affiliates from participating in any contract at any tier, directly or indirectly, with or for the City and County; any contractor and the contractor's affiliates named in an Order of Debarment shall

be deemed irresponsible and disqualified for the purposes of all City and County contracts. Upon such Order, any department head, board or commission may cancel any existing contract with a debarred contractor or direct the cancellation of an existing subcontract to which a debarred contractor is a party. In the event of such cancellation, no recovery shall be had on that contract by the debarred party other than for work satisfactorily completed as of the date of cancellation.

Administrative Debarment shall neither exclude nor preclude any other administrative or legal action taken by the City and County.

Violation of an Order of Debarment, such as by submission of a proposal, bid or sub-bid during the debarment period, may be considered a false claim as provided in this Administrative Code and the California Government Code. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

SEC. 28.13. PUBLICATION AND REPORTS OF DEBARMENT.

Any Order of Debarment issued under this Chapter shall be a public record. The Controller shall maintain and publish on the City's Internet website a current list of contractors subject to Orders of Debarment and the expiration dates for the respective debarment terms. The Controller shall submit a semi-annual report to the Clerk of the Board of Supervisors that includes (a) the contractors then subject to Order of Debarment and the expiration dates for the respective debarment terms; (b) the status of any pending debarment matters; and (c) any Order of Debarment received by the Controller since the date of the last report. (Added by Ord. 8-04, File No. 031503, App. 1/16/2004)

CHAPTER 29: FINDINGS OF FISCAL RESPONSIBILITY AND FEASIBILITY

- Sec. 29.1. Applicability of this Chapter 29.
- Sec. 29.2. Board of Supervisors Determination.
- Sec. 29.3. Information to be Submitted to the Board of Supervisors.
- Sec. 29.4. Board of Supervisors Procedures for Determination.
- Sec. 29.5. Processing of Environmental Review Application.
- Sec. 29.6. Resubmittal of Project.
- Sec. 29.7. Applicability of this Chapter to On-Going Environmental Review.
- Sec. 29.8. Severability.

SEC. 29.1. APPLICABILITY OF THIS CHAPTER 29.

(a) This Chapter 29 shall be applicable to any project, as defined by the California Environmental Quality Act, Public Resources Code Sections 21000 and following, as amended; and Guidelines for Implementation of the California Environmental Quality Act, as amended, appearing as Title 14, Division 6, Chapter 3 of the California Code of Regulations (hereinafter referred to collectively as CEQA), that is proposed by and under the jurisdiction of an office, board, department, commission or other unit of government of the City and County and meets both of the following criteria:

(1) the cost of implementing and/or constructing the proposed project exceeds twenty-five million dollars (\$25,000,000.00), and

(2) The Project Sponsor reasonably estimates at the time of filing the application for environmental review that a portion of the pre-development, planning or construction costs of the proposed project in excess of \$1,000,000.00, but excluding the costs of City personnel working on such project, will be paid from public monies. For purposes of this Chapter 29, "public monies" shall mean (i) funds from the City's

General Fund or funds otherwise held by any Department of the City, (ii) the proceeds of any indebtedness of the City, including without limitation revenue bonds, lease revenue bonds or certificates of participation secured by the City's General Fund or funds otherwise held by any City department, or (iii) federal or state grants or loans to, from, or through a City department, entity, or agency, or (iv) rent obligations that are reduced, waived or forgiven by the City under a lease for real property, including the fair market value of any free rent period under the lease. Revenues from tax increment financing shall not be considered "public monies" for these purposes.

(b) Notwithstanding Subsection 29.1(a), no provision of this Chapter 29 shall be interpreted to grant the Board of Supervisors broader powers to set policy for a project proposed by an office, board, department, commission or other unit of government of the City and County than is granted by the City Charter or applicable state or federal law and proposed projects shall not be subject to the determination by the Board of Supervisors provided for by this Chapter 29 where the City Charter or applicable state or federal law precludes such a determination by the Board of Supervisors.

(c) Notwithstanding anything to the contrary in this Chapter 29, this Chapter 29 shall not apply to the following projects:

(1) Any which has been specifically approved by the voters prior to January 1, 1998 or project where more than seventy-five percent (75%) of the amount of public monies for the project will be financed with proceeds from a bond measure that the Board of Supervisors has submitted for approval to the voters and which has been approved by the voters; or

(2) Any project that is the subject of a term sheet (or similar summary of key terms and conditions) or an exclusive negotiating agreement (or similar agreement setting for a schedule and terms for proceedings towards final

transactional documents), approved or endorsed by the Board of Supervisors on or after January 1, 2003 but before July 1, 2004, or that has otherwise been approved or endorsed by the Board of Supervisors during such time period, provided however, that if the Board of Supervisors subsequently elects to withdraw such endorsement or approval, this exemption shall not apply and such project shall be subject to the terms of this ordinance to the extent otherwise applicable; or

(3) Any project where funds allocated or granted by the San Francisco County Transportation Authority ("SFCTA"), or other funds secured by or requiring contribution of matching or leveraged SFCTA funds, comprise more than seventy-five percent (75%) of the public monies for the project, provided that the SFCTA has reviewed and approved the plans or projects to be financed with such funds from the SFCTA; or

(4) Any project that is a utility capital improvement project under the jurisdiction of the San Francisco Public Utilities Commission. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004; amended by Ord. 172-05, File No. 050817, App. 7/29/2005)

SEC. 29.2. BOARD OF SUPERVISORS DETERMINATION.

(a) Prior to submittal to the Planning Department of an environmental evaluation application under San Francisco Administrative Code Chapter 31 and CEQA, the office, board, department, commission or other unit of government of the City and County proposing a project (the "Project Sponsor") shall seek and procure a Board of Supervisors determination that the plan for undertaking and implementing the project is fiscally feasible and responsible, as set forth in this Chapter 29. The Board shall consider the fiscal feasibility of the project, using the following criteria when it evaluates a project's fiscal feasibility: (1) direct and indirect financial benefits of the project to the City, including to the extent applicable costs savings or new revenues, including tax revenues, generated by the proposed project; (2) the cost of construction; (3) available funding for the project; (4) the long

term operating and maintenance costs of the project; and (5) debt load to be carried by the City department or agency. The Board may consider other criteria that may be useful in evaluating a project's fiscal feasibility.

(b) A determination by the Board that the plan for implementing and undertaking the project is fiscally feasible and responsible shall not include a determination as to whether the Project Sponsor or other unit of the government of the City and County should approve the project and it is the intent of the Board of Supervisors in requiring the determination to decide only whether the proposed project merits further evaluation and environmental review. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004)

SEC. 29.3. INFORMATION TO BE SUBMITTED TO THE BOARD OF SUPERVISORS.

The Project Sponsor shall submit to the Board of Supervisors the following documents and information concerning the proposed project:

(1) A proposed resolution for consideration and adoption by the Board of Supervisors finding the plan to undertake and implement the proposed project fiscally feasible. The Mayor, Director of a Project Sponsor department, or an individual Supervisor may introduce the resolution at the Board of Supervisors.

(2) The Project Sponsor shall provide information about the proposed project, including but not limited to, a general description of the project, the general purpose of the project, and a fiscal plan describing the estimated cost and all known and potential available funding sources for the project. If environmental review already has commenced for a proposed project on only 1, 2005, the applicant for environmental review shall also identify costs it has incurred for environmental review of the project so far, as well as any other costs it has incurred to date. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004; amended by Ord. 172-05, File No. 050817, App. 7/29/2005)

SEC. 29.4. BOARD OF SUPERVISORS PROCEDURES FOR DETERMINATION.

(a) The Board of Supervisors, in accordance with its rules of order, shall refer the proposed resolution and information to the Board committee responsible for review of fiscal measures, such as appropriation ordinances, bond issues, taxes, fees and other revenue measures.

(b) In evaluating the fiscal feasibility of the proposed project, the Board may request assistance from the Budget Analyst or the Controller. The Project Sponsor may submit additional information to the Board. Based upon the criteria set forth in Section 29.2, the Board shall determine whether the project is fiscally feasible and responsible. The Board shall act by resolution by a majority vote of all its members.

(c) The Board shall act as expeditiously as possible, and shall hold a public hearing regarding the fiscal feasibility of a proposed project within ninety (90) days following introduction of the resolution at the Board of Supervisors. The Board may continue its consideration of the proposal in order to receive more information from the Budget Analyst or the Controller or to further consider the proposal. Failure of the Board to hold a public hearing within such 90 day period shall not be deemed to constitute a determination that the project is fiscally feasible and responsible. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004)

SEC. 29.5. PROCESSING OF ENVIRONMENTAL REVIEW APPLICATION.

(a) In the event the Board of Supervisors determines that the proposed project is fiscally feasible and responsible, the Project Sponsor may file an environmental evaluation application with the Planning Department and may undertake environmental review of the proposed project as required by CEQA and Administrative Code Chapter 31.

(b) In the event the Board of Supervisors determines that the proposed project is not fiscally feasible, the Project Sponsor shall not undertake environmental review of the proposed

project and the Planning Department shall not commence environmental review of the proposed project, including the necessary scoping, technical studies, and preparation of environmental documents.

(c) An environmental evaluation application for a project subject to this Chapter 229 shall not be deemed complete, and the Planning Department shall not undertake environmental review of a project, unless a copy of the Board of Supervisors Resolution finding the proposed project fiscally feasible and responsible is submitted to the Planning Department. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004)

SEC. 29.6. RESUBMITTAL OF PROJECT.

The Project Sponsor may revise or modify the proposed project and may submit it again to the Board of Supervisors for consideration pursuant to this Chapter 29 no earlier than three (3) months following a determination by this Board that the proposed project is not fiscally feasible and responsible. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004)

SEC. 29.7. APPLICABILITY OF THIS CHAPTER TO ON-GOING ENVIRONMENTAL REVIEW.

(a) This Chapter 29 shall apply to any proposed project that has not completed environmental review pursuant to the California Environmental Quality Act as of January 27, 2004. In the event environmental review has commenced for a proposed project, the Planning Department shall not suspend its environmental review of the project, provided that the Project Sponsor submits to the Board of Supervisors, within thirty (30) days of the effective date of this amended ordinance No. 172-05, the materials required by Section 29.3 for a determination of fiscal feasibility. If a Project Sponsor does not submit the required information within the 30-day period, the Planning department shall suspend its environmental review of the project until such materials are submitted to the Board of Supervisors. Notwithstanding any other provision in this subsection 29.7, Chapter 29 shall not apply to any project that includes affordable

housing funded in whole or in part through the Mayor's Office of Housing ("MOH"), where the environmental evaluation application for such project was filed prior to January 27, 2004 and where some or all of the MOH funds have been advanced to the project prior to the Effective Date of this Chapter 29.

(b) No City department or agency shall take any action to extend an existing exclusive negotiating agreement or similar agreement that has been entered into prior to the effective date of this ordinance for a project subject to this Section until the Board of Supervisors has determined that the project is fiscally feasible and responsible under this Chapter. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004; amended by Ord. 172-05, File No. 050817, App. 7/29/2005)

SEC. 29.8. SEVERABILITY.

If any Section, paragraph, sentence, clause or phrase of this Chapter 29 is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Chapter 29. The Board of Supervisors declares that it would have passed each section, paragraph, sentence, clause or phrase of this Chapter 29 irrespective of the fact that any portion of this Chapter 29 could be declared unconstitutional, invalid or ineffective. (Added by Ord. 104-04, File No. 040146, App. 6/4/2004)

CHAPTER 30: CENTRALIZATION OF WORKFORCE DEVELOPMENT

Article I. In General

- Sec. 30.1. Findings.
- Sec. 30.2. Definitions.
- Sec. 30.3. Purpose.
- Sec. 30.4. Powers and Duties.
- Sec. 30.5. City Department Responsibilities.
- Sec. 30.6. Reporting Requirements.
- Sec. 30.7. Local Workforce Investment Board.
- Sec. 30.8. Severability.
- Secs. 30.9—30.19. Reserved.

Article II. San Francisco Bonding Program

- Sec. 30.20. Findings.
- Sec. 30.21. Definitions.
- Sec. 30.22. Establishment.
- Sec. 30.23. Purpose.
- Sec. 30.24. Outreach Requirements.
- Sec. 30.25. Powers and Duties.
- Sec. 30.26. Limitation of Liability.
- Sec. 30.27. Severability.

ARTICLE I. IN GENERAL

SEC. 30.1. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) The complimentary goals of the City's Workforce Development programs and services are to prepare unemployed and underemployed individuals in becoming as economically self sufficient as possible, and to assist employers with locating and retaining skilled workers.

(b) To this end, many City departments currently manage specific workforce development programs that provide a wide array of services to targeted communities with local, State,

and Federal funding in order to support workforce development and to create jobs within the City.

(c) However, ongoing unemployment and underemployment perpetuate individual and community disenfranchisement and contribute to increased criminal activity. The City must focus renewed efforts on employment training, job creation placement and retention services, and career advancement, particularly in neighborhoods struggling with poverty and violence.

(d) Different Workforce Development programs and services housed in different City departments, agencies and community based organizations all work toward the common goals, but unfortunately tend to duplicate programs, create gaps in services, and increase administrative costs and delay, thereby decreasing the overall effectiveness of the City's workforce development efforts.

(e) Currently, the Department of Economic and Workforce Development (DEWD) is responsible for Workforce Development functions in the City, providing policy direction and oversight for Workforce Development programs and services. In addition, the DEWD staffs the San Francisco Workforce Investment Board, a local board of community stakeholders required by Federal Law to govern implementation of, and compliance with, the Workforce Investment Act 1998 (29 U.S.C.A. 2801 et seq.), a significant source of federal funding. Therefore, the Director of the DEWD should oversee comprehensive City-wide Workforce Development strategic and funding allocation plans that coordinate all City department resources devoted to Workforce Development in order to more effectively meet the needs of job seekers in obtaining economic self-sufficiency, and of employers in locating and retaining a skilled workforce. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.2. DEFINITIONS.

For the purposes of this Chapter, the following definitions shall apply to the terms used herein:

(a) "City" shall mean the City and County of San Francisco.

(b) "Director" shall mean the Director of Workforce Development within the DEWD.

(c) "Mayor" shall mean the Mayor of the City and County of San Francisco or his or her designee.

(d) "Department of Economic and Workforce Development" (DEWD) shall mean that department or its successor department, as set forth in San Francisco Administrative Code Section 2A.270.

(e) "Funding Allocation Plan" shall mean the comprehensive annual plan for the appropriation and expenditure of all local, State, and Federal Workforce Development Funds administered by the DEWD and all other City departments. The funding allocation plan shall include program and administrative budgets, service delivery structures, performance measures, and outcome goals for all workforce programs and City departments administering workforce dollars.

(f) "Workforce Development" shall mean any effort by any and all departments and agencies of the City and County of San Francisco, to provide and/or fund job readiness, preparation and other pre-employment services, training, placement, retention and advancement programs and services for unemployed or underemployed individuals, to locate jobs and place individuals in those jobs. It shall include efforts to work with the private, public and non-profit sectors to create and improve job opportunities, employment retention and career enhancement, and to set policy and objectives in achieving the dual goals of individual economic self sufficiency and preparation of a skilled labor force. "Workforce Development" shall include efforts to seek and manage funding and accountability for pre-employment services, job preparation, training, placement, retention, and career advancement programs.

(g) "Workforce Development Service Providers" shall mean all entities and organizations that provide job readiness and skill training, locate jobs and place individuals in those jobs, work with the private and non-profit sector to create and improve job opportunities, provide job retention services and career advancement programs, or any other services related to "workforce development" funded through, or by the City with Federal, State and/or local funds.

(h) "Workforce Investment Act of 1998 (WIA)" shall mean the Federal Law governing federally-funded workforce development programs codified at 29 USCA 2801, et seq., or any successor federal programs.

(i) "Workforce Investment San Francisco (WISF)" shall mean the Local Workforce Investment Board required by WIA and defined at 29 USCA 2832. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.3. PURPOSE.

The purpose of this Chapter is to reorganize the City's Workforce Development efforts into one location within the DEWD or successor department, in order to centralize Workforce Development, policy and oversight increase the effectiveness of Workforce Development Service delivery, coordinate Workforce Development Funding, eliminate duplicative services, fill gaps in services, and to create a single office that oversees the City's complimentary goals of preparing unemployed and underemployed individuals to become as economically self sufficient as possible, and assisting employers with locating and retaining skilled workers. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.4. POWERS AND DUTIES.

To the extent allowable by the City Charter, local, State, and Federal law, the Director shall:

(a) Reorganize oversight of the City's workforce development efforts in one location within his or her department;

(b) Create Workforce development policy and provide an overall five-year strategic plan that includes consideration of the workforce develop-

ment needs of low income, monolingual speakers, youth and other unemployed or underemployed groups with barriers to employment, consistent with the Strategic Plan for Economic Development approved by the Board of Supervisors, for all employment and job training activities in San Francisco, and consistent with the Local Plan required by WIA (the "Workforce Development Strategic Plan");

(c) Define and enforce meaningful outcome measures for job seekers, current employees, and employers using the City's workforce development system by:

(1) developing a uniform system of data collection for use by all City departments, agencies and community based organizations to track all permanent job placements;

(2) requiring City departments to ensure that contractors providing workforce development services reach performance goals;

(3) collecting and managing all workforce development system data; and

(4) reporting outcomes to all system stakeholders.

(4d) Establish policy for, and oversee all Federal, State and local, including general fund, dollars for Workforce Development activities in the City. In this endeavor, the Director shall leverage all available workforce development system resources, avoid duplicate services, fill identified gaps in services, and streamline administrative and programmatic functions.

(1) Phase 1, to be completed during Fiscal Year 2007-2008:

(A) identify all Federal, State, and local Workforce Development Funds and the legal requirements for securing and retaining such funds, that are currently administered by all City departments and agencies, and establish budget mechanisms to track such funds ("Identified Workforce Development Funds");

(B) identify all City expenditures incurred in Workforce Development Programs and services, and establish budget mechanisms to track such expenditures ("Identified Workforce Development Expenditures");

(C) prepare a Funding Allocation Plan for all general fund dollars designated as Identified Workforce Development Funds and as Identified Workforce Development Expenditures administered by all City departments for review and comment by the WISF by February 28, 2008, and for review and approval by the Board of Supervisors by March 31, 2008. The Board of Supervisors shall make a determination on such plan by April 30, 2008.

(D) Manage all general fund dollars, including all matching funds necessary to obtain Federal and State Workforce Development funds.

(2) Phase 2, to be completed during Fiscal Year 2008-2009:

(A) continue to identify all Federal, State, and local Workforce Development Funds and the legal requirements for securing and retaining such funds, that are currently administered by all City departments and agencies, and establish budget mechanisms to track such funds ("Identified Workforce Development Funds");

(B) continue to identify all City expenditures incurred in Workforce Development Programs and services, and establish budget mechanisms to track such expenditures ("Identified Workforce Development Expenditures");

(C) prepare a Funding Allocation Plan for all Federal, State and general fund dollars designated as Identified Workforce Development Funds and as Identified Workforce Development Expenditures administered by all City departments for review and comment by the WISF by December 1, 2008, and for review and approval by the Board of Supervisors by January 1, 2009. The Board of Supervisors shall make a determination on such plan by February 28, 2009.

(D) continue to manage all general fund dollars, including all matching funds necessary to obtain Federal and State Workforce Development Funds.

(E) create a timeline and a plan for further centralization of Workforce Development efforts under the DEWD in order to maximize efficiency and effectiveness consistent with the Workforce Development Strategic Plan, WIA, and this Chap-

ter. This plan shall be approved by the Board of Supervisors, and shall be implemented beginning in fiscal year 2009-2010.

(e) Work with all City departments to ensure that the City delivers and administers Workforce Development services consistent with this Chapter and with the applicable policies set forth by the Board of Supervisors and the DEWD; and

(f) Work closely with the WISF to coordinate and streamline Workforce Development services for job seekers and employers in the City, consistent with the WIA and this Chapter.

(g) Assume the management of the First Source Hiring Program. In addition, to the extent consistent with the Charter, the Director shall administer all funds that the City budget appropriates to fund the First Source Hiring Program. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.5. CITY DEPARTMENT RESPONSIBILITIES.

Subject to the City Charter, local, State and Federal law:

(a) All City departments engaged in workforce development programs and services shall (1) provide information regarding all Federal, State and local Workforce Development Funds to the Director within 30 days of the effective date of this ordinance, (2) follow the Director's strategic direction for such activities and (3) not implement any new workforce development efforts without the approval of the Director.

(b) In Phase 1, as described in Section 30.4(d)(1), the department head of each department that administers workforce development funds shall enter into a Memorandum of Understanding with the DEWD, or successor department, explaining each department's responsibilities and setting forth measurable outcomes as a condition of administering and/or receiving any local, including all general fund, workforce development funding from the DEWD. Each departmental Memorandum of Understanding shall also set forth the department's Workforce Development budget and program plans. Finally, City

departments shall track and report back to the Director job seeker and employer services outcomes and shall respond to other reasonable requests for data from the Director.

(c) In Phase 2, as described in Section 30.4(d)(2), the department head of each department that administers Workforce Development Funds shall, enter into a Memorandum of Understanding with the DEWD, or successor department, explaining each department's responsibilities and setting forth measurable outcomes as a condition of administering and/or receiving any federal, state and local, including all general fund, Workforce Development funding from the DEWD. Each departmental Memorandum of Understanding shall also set forth the department's workforce development budget and program plans. Finally, City departments shall track and report back to the Director job seeker and employer services outcomes and shall respond to other reasonable requests for data from the Director.

(d) Beginning in Fiscal Year 2008-2009, the department head of each department that administers Workforce Development Funds shall administer the Identified Workforce Development Funds and Identified Workforce Development Expenditures in accordance with the annual Approved Funding Allocation Plan.

(e) Beginning in Fiscal Year 2009-2010, the department head of each department that administers Workforce Development Funds shall comply with the timeline and a plan for centralizing Workforce Development efforts under the DEWD prepared by the Director as required in Section 30.4(d)(2), and approved by the Board of Supervisors. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.6. REPORTING REQUIREMENTS.

Within one year after the effective date of this Chapter and every year thereafter, the Director shall file a written report with the Board of Supervisors that explains Workforce Development policies for the City and evaluates the DEWD's ability to leverage workforce development system resources, avoid duplicate services,

fill gaps in services, and streamline administrative and programmatic functions, consistent with this Chapter. The report shall also include information regarding the number of individuals placed in permanent jobs across the City and where those individuals were placed for work, verified in writing by the employer. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.7. LOCAL WORKFORCE INVESTMENT BOARD.

(a) Prior to making any appointments to the WISF, as set forth in the WIA, the Mayor shall submit the name of each nominee to the Board of Supervisors. Unless the Board of Supervisors disapproves a nominee within thirty days after receipt of the Notice of Appointment, the appointment shall become final. The Mayor need not submit WISF nominees to Board of Supervisors for approval, if the Mayor appoints two (2) members of the Board of Supervisors to the WISF.

(b) Pursuant to the relevant provisions of the WIA, the Mayor may include individuals on the WISF as he or she determines to be appropriate. As a matter of policy, the Board of Supervisors strongly urges the Mayor to appoint a member of the Board of Supervisors to the WISF.

(c) The Director shall submit the Local Plan, as defined and required by the WIA, to the Board of Supervisors for review and comment not less than 30 days prior to the submission of the Plan to the Governor.

(d) (1) A seven (7) member committee ("Committee") shall be convened to serve in an advisory capacity to the WISF. This committee shall include members representing workforce development service providers and other community-based organizations serving low-income San Francisco residents and those with barriers to employment. The Committee shall advise the WISF on workforce system priorities, client needs and services.

(2) The Board of Supervisors shall appoint four (4) members to the Committee. The Transitional Youth Task Force shall appoint one (1) member to the Committee; the Local Homeless

Coordinating Board shall appoint one (1) member to the Committee; the San Francisco Safe Communities Re-Entry Council shall appoint one (1) member to the Committee. All Committee members must be staff and/or Board members of 501c3 organizations.

(3) All Committee members will be appointed to serve for a two year term, and all Committee members and/or the organizations they represent will serve for no more than two (2) consecutive terms. The terms are to be staggered. Therefore, at the first meeting of the Committee, the members will draw lots to determine which three (3) members will serve for one (1) year.

(4) The Chair of the Committee and/or the organization he/she represents may not receive any funds for Workforce Development efforts from any department or agency of the City and County of San Francisco during his/her term of appointment as Chair, nor for a minimum of two years following the conclusion of his/her Committee service. The Committee will annually nominate a Committee Chair (from among its membership), to be appointed by the WISF. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SEC. 30.8. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional by any court or Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Added by Ord. 270-07, File No. 071056, App. 11/26/2007)

SECS. 30.9—30.19. RESERVED.

ARTICLE II. SAN FRANCISCO BONDING PROGRAM

SEC. 30.20. FINDINGS.

The Board of Supervisors finds and declares the following:

(a) The City and County of San Francisco funds many programs that provide employment training, career counseling, access to job lists, and placement for people looking for work; and

(b) Many people accessing these services face barriers to employment including criminal histories, substance abuse histories, or poor credit histories, which lead some employers to view these people as potentially untrustworthy workers; and

(c) There is a significant public interest in providing an incentive for prospective employers to grant job opportunities to people with these barriers who may be overlooked simply because of their histories. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.21. DEFINITIONS.

For purposes of this Article only, the following definitions apply:

(a) "At-risk job applicant" means a person seeking employment who faces barriers to employment that include a criminal history, a substance abuse history, or a poor credit history. In addition, an "at-risk job applicant" includes an economically disadvantaged person who lacks a work history, and any other individual who the DEWD determines could secure employment with the assistance of a bond under this Program.

(b) "Bond amount" means the total insurance amount issued by the Program as determined by the City based on the reasonable justification by the employer as to the theft risk of the job, not to exceed \$25,000.00.

(c) "Bond unit" means one unit of \$5,000.00 of insurance coverage for a six-month period.

(d) "Employer" means any individual, group, company, or business, or any other entity in either the public or private sector that attempts to hire at risk job applicants for any work to be performed, which may include but not be limited to work in the following industries: construction, restaurant, hotel, retail, janitorial, or office support.

(e) "Fidelity Bond Program" means the Federal bonding program administered by the United States Department of Labor that facilitates the sale of fidelity bonds to purchasing entities for the purpose of providing free bonds to employers to ensure them against acts of dishonesty by new employees.

(f) "Fidelity Bond Purchase Agreement" means the written agreement that the federal Fidelity Bond Program requires to purchase bonds for purposes of this Program. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.22. ESTABLISHMENT.

A San Francisco Bonding Program ("Program") is hereby established. The San Francisco Department of Economic and Workforce Development ("DEWD") shall administer the Program. The DEWD is authorized to enter into a Fidelity Bond Purchase Agreement with the Federal Bonding Program on behalf of the City. The DEWD shall provide bonds to prospective employers who agree to hire at-risk applicants consistent with the rules and regulations of the Federal Bonding Program. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.23. PURPOSE.

The purpose of the Program is to provide free bonds to employers as an incentive for the employer to hire at-risk applicants and to protect the employer against acts of dishonesty. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.24. OUTREACH REQUIREMENTS.

Consistent with the requirements under this Article, the Department of Economic and Workforce Development, other City departments, and City-funded organizations implementing workforce development services shall inform potential at-risk job applicants seeking services from those agencies of the bonding opportunities through the San Francisco Bonding Program and shall provide contact and location information of the Program to those individuals. In addition, the San Francisco Office of the District Attorney, the San Francisco Office of the Public Defender, the San Francisco Juvenile Probation Department, the San Francisco Adult Probation Department, and the San Francisco Sheriff's Department shall provide the same information

to potential at-risk job applicants exiting the criminal justice system. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.25. POWERS AND DUTIES.

The DEWD shall have all of the powers and duties necessary to administer the Program consistent with the Federal Bonding Program. In addition, the DEWD shall have the following powers and duties:

(a) **Eligibility Criteria.** Consistent with this Article, the DEWD shall determine eligibility criteria for people to secure employment with the assistance of a bond under this Program. In no event shall a person be eligible for a bond under this Program unless an employer has made a job offer to that person and the person has a date scheduled to start work.

(b) **Bond Amount.** The DEWD shall establish guidelines that determine the appropriate bond amount for each employer, but in no instance shall a bond amount exceed \$25,000.00 per employee. The DEWD shall take into account the employer's reasonable estimation of the theft risk of the job.

(c) **Record keeping and reporting requirements.** The DEWD shall comply with all record keeping requirements of the Federal Bonding Program as may be updated from time to time. In addition, the DEWD shall prepare and submit bi-annual reports to the Board of Supervisors that shall include but not be limited to information on the following: outreach efforts to at-risk applicants; the number of bonds that the City purchases on behalf of at-risk applicants; the number of at-risk applicants assisted under the Program, and the number of employers that utilize the Program. The reports shall also inform the Board of Supervisors of administrative changes that the DEWD made to improve the program and if necessary, recommendations for legislative changes that will improve the Program. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.26. LIMITATION OF LIABILITY.

By adopting this Article, the City and County of San Francisco is assuming an undertaking

only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such a breach proximately caused injury. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

SEC. 30.27. SEVERABILITY.

If any section, subsection, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court or Federal or State agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. (Added by Ord. 272-07, File No. 070410, App. 11/26/2007)

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